

United States

4

Circuit Court of Appeals

For the Ninth Circuit.

JESSE S. PHILLIPS, as Superintendent of Insurance of the State of New York, by MOSES JAMES WRIGHT, Special Deputy Superintendent of Insurance, His Agent and Liquidator of the Casualty Company of America, a Corporation,

Plaintiff in Error,

vs.

JOHN C. LYNCH, as Receiver of the Pacific Coast Casualty Company, a Corporation, FRIEND WILLIAM RICHARDSON, as Treasurer of the State of California, and ALEXANDER McCABE, as Insurance Commissioner of the State of California,

Defendants in Error.

Transcript of Record.

Upon Writ of Error to the Southern Division of the United States District Court of the Northern District of California, Second Division.

FILED

AUG 1 - 1919

F. D. MONEKTON,

CLERK



**United States**  
**Circuit Court of Appeals**  
**For the Ninth Circuit.**

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JESSE S. PHILLIPS, as Superintendent of Insurance of the State of New York, by MOSES JAMES WRIGHT, Special Deputy Superintendent of Insurance, His Agent and Liquidator of the Casualty Company of America, a Corporation,  
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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*In the District Court of the United States, in and  
for the Ninth Judicial Circuit, Northern Dis-  
trict of California, Second Division.*

(No. 16,079.)

JOHN C. LYNCH, as Receiver of the PACIFIC  
COAST CASUALTY COMPANY, a Corpo-  
ration,

Plaintiff,

vs.

FRIEND WILLIAM RICHARDSON, as Treas-  
urer of the State of California, and ALEX-  
ANDER McCABE, as Insurance Commis-  
sioner of the State of California,

Defendants.

**Complaint in Action to Recover Possession of  
Personal Property.**

Now comes John C. Lynch, as receiver of the Pacific Coast Casualty Company, a corporation, as hereinafter more fully shown, and by leave of this Court, first had and obtained, files this his complaint against the defendant Friend William Richardson, as Treasurer of the State of California, and Alexander McCabe, as Insurance Commissioner of the State of California, and for cause of action alleges:

I.

That the defendant, Friend William Richardson, is the duly elected, qualified and acting Treasurer of the State of California, and the defendant Alexander McCabe is the duly appointed, qualified and acting Insurance Commissioner of the State of California.



## II.

That on the 17th day of November, 1916, Daniel Combs filed in this court an action against the Pacific Coast Casualty Company, a bonding and casualty insurance corporation, created and existing under and by virtue of the laws of the State of California, for the purpose and with the object of having a receiver of said corporation appointed by this court and of having all of the property and assets of said corporation taken [1\*] into the possession of this court, through its receiver thus to be appointed, and said property and assets applied to the payment of all the outstanding debts and liabilities of said corporation. Said action is sometimes hereinafter referred to as the "original action."

## III.

That thereafter, to wit, on the 6th day of December, 1916, after due proceedings in that behalf had and obtained, in said "original action," this court duly gave, made and entered its order and decree appointing this plaintiff receiver of this court of all and singular the lands, tenements and hereditaments of the said Pacific Coast Casualty Company and of all personal assets thereof, of every kind, including all sum or sums of money due and payable or to become due and payable to it, and of all its office furniture, books of account and other personal property of every name, nature and description, and all of the stocks, bonds, and obligations, chose in ac-

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\*Page-number appearing at foot of page of original certified Transcript of Record.



tion, accounts and rights under contracts now owned or possessed by said corporation, together with all its corporate rights, franchises, incomes and profits of every description, in this district, to have and to hold the same as an officer of and under the orders and directions of this court, and this plaintiff as such receiver was by said order and decree thereby authorized and directed to take immediate possession of all and singular the property above described.

IV.

That said "original action" is No. 320, in equity, and the complaint therein and the order and decree appointing this plaintiff receiver, as hereinabove averred, are hereby referred to for a fuller and more detailed statement of the facts herein averred and, with the permission of this Court, said complaint, order and decree are made a part hereof.

V.

That plaintiff thereafter, to wit, on the 6th day of December, [2] 1916, duly qualified as such receiver, and ever since said day has been and now is the duly appointed, qualified and acting receiver of this court in said action as aforesaid.

VI.

That plaintiff is informed and believes and upon such information and belief alleges that for the purpose and with the object of obtaining for itself the right to do a casualty insurance business in states other than the State of California, and particularly in the State of New York, and in compliance with the laws of the State of New York requiring every insurance corporation created under the laws of a

state other than the State of New York, to keep on deposit with the Superintendent of Insurance of the State of New York, or with the auditor, comptroller or general fiscal officer under whose laws such corporation was formed, securities of the value of \$250,000 for the benefit of all of the policy-holders of such corporation as a condition precedent to the granting of permission to such corporation to do a casualty insurance business in the State of New York, said Pacific Coast Casualty Company at some time prior to the filing of said complaint by said Combs in the "original action," delivered to the Insurance Commissioner of the State of California to be by him deposited with the Treasurer of the State of California for the security and benefit of all of the policy-holders of said company, certain securities consisting of bonds of an aggregate value of \$250,000 and upwards.

#### VII.

That plaintiff is informed and believes and upon such information and belief alleges that the Insurance Commissioner of the State of California, upon the receipt by him of said securities forthwith made a special deposit of the same in the State Treasury in a package or packages marked with the name of said Pacific Coast Casualty Company, and that said securities, [3] together with certain interest coupons thereon, have ever since continued to be so deposited with and held by the Treasurer of the State of California.

#### VIII.

That said securities so delivered to said Insurance

Commissioner and by him deposited with said Treasurer of the State of California, as averred in the last foregoing paragraph, plaintiff is informed and therefore avers, consist of the following :

Description.	No.	Par Value (each).	
15 City of Los Angeles	Water Works	30/37, 313/22	\$1000
20 City of Los Angeles	Water Works	7919, 7922, 7925, 8139/63	1000
10 City of Oakland	Sewer	951/3-976/82	1000
10 City of Oakland	Park	288/97	1000
4 City of Oakland	Mun. Imp.	1713/16	1000
16 Town of Palo Alto	Mun. Imp.	25/40	1000
4 Town of Palo Alto	Mun. Imp.	37/40	875
1 Town of Palo Alto	Water	37	1000
2 Town of Palo Alto	Sewer	77, 78	500
2 City of Riverside	St. Imp.	69, 70	750
45 City & Co. of San Fr.	Fire & Sewer	2806/30, 4911/12, 3941/53	1000
18 City & Co. of San Fr.	Geary St. Ry.	1196/1200, 1204/6, 1301/10	1000
10 City of Stockton	Mun. Imp.	183, 186/8, 191/3, 196/8	1000
20 City of San Diego	Sewer Ext.	240/5, 253/9, 267/73	500
16 Town of Sebastopol	Mun. Imp.	70/1, 73/4, 76/7, 79/80	750
6 City of Tulare	Mun. Imp.	65/70	1000
11 City of Visalia	Mun. Imp.	104, 160/7, 109/10, 112/3, 115/6, 118/9	1000
25 San Joaquin Highway		1799, 1811, 1850/61	1000
10 Nor. Cal. Ry. of Cal.	1st Mtg.	522/26, 770/74	1000
15 Northern Ry. of Cal.		496/500, 1189/93, 1810, 3120, 3746/7, 4201	1000
7 Pacific Ele. Ry. Co.		51, 1714/15, 7992/5	1000
2 Southern Pacific Co.	1st Ref.	M-73049, M-73038	1000

Plaintiff asks that in case securities other than or in addition to those enumerated in this paragraph are now held on deposit by the said Treasurer of the State of California for the purposes and on the trusts in this complaint stated, such securities shall be subject to the judgment, orders, and decrees of [4] this court in this action in the same manner as the securities herein specifically described.

### IX.

Plaintiff is informed and believes and upon such information and belief alleges that said securities so delivered to said Insurance Commissioner of the State of California and by him deposited with said Treasurer as hereinabove averred, were delivered to said Insurance Commissioner and by him deposited with said Treasurer and are now held by said Treasurer subject to disposition thereof for the benefit of all of the policy-holders of said corporation by such court as should acquire jurisdiction of the subject matter thereof, in the event that said corporation should cease business or become insolvent or should fail to pay liabilities which should accrue to policy-holders of said corporation as the same shall fall due.

### X.

Plaintiff is informed and believes and on such information and belief alleges that on or about the 28th day of February, 1916, said Pacific Coast Casualty Company surrendered its permit to do business in the State of California, and since said last mentioned date has ceased to do business in the State of California or elsewhere and that since said date

said Pacific Coast Casualty Company has been in process of liquidation, as hereinbefore averred.

### XI.

That plaintiff is advised and therefore avers that by reason of the facts hereinabove stated, this court has acquired and assumed jurisdiction of said securities deposited with the defendant as aforesaid, as well as all other property of said Pacific Coast Casualty Company within this district, including jurisdiction to determine and enforce the rights of policy-holders, creditors and others therein and thereto, and that plaintiff as the [5] officer and receiver of this court, and by virtue of the orders and directions of this court, as hereinabove averred, is entitled to the possession of said securities and to hold the same subject to such orders and decrees as to the disposition and application thereof, as the Court hereafter may make in said "original action."

### XII.

That plaintiff, before the filing of this complaint, made demand upon said defendants and each thereof for the delivery to plaintiff as receiver as aforesaid of said securities, but defendants refused and neglected to have ever since refused and neglected to deliver the same or any part thereof unto plaintiff.

WHEREFORE, plaintiff demands judgment against the defendants for the delivery to him of all of the securities mentioned and referred to in this complaint, and for such other and further or different relief as may be meet in the premises.



Dated June 1st, 1917.

HIRAM W. JOHNSON, Jr.,

A. A. DE LIGNE,

Attorneys for Plaintiff.

State of California,

City and County of San Francisco,—ss.

John C. Lynch, being first duly sworn, deposes and says:

That he is the duly appointed, qualified and acting receiver of the Pacific Coast Casualty Company, a corporation.

That he has read the foregoing complaint and knows the contents thereof; that the same is true of his own knowledge except as to the matters which are therein stated on information and belief, and as to those matters that he believes it to be true.

JOHN C. LYNCH.

Subscribed and sworn to before me this 1st day of June, 1917.

[Seal] HORTENSE GARDNER,  
Notary Public in and for the City and County of  
San Francisco, State of California. [6]

[Endorsed]: Filed Jun. 1, 1917. Walter B. Mal-  
ling, Clerk. By J. A. Schaertzer, Deputy Clerk.  
[7]

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(Title of Court and Cause.)

Answer of **Alexander McCabe**, as Insurance  
Commissioner of the State of California.

Comes now the defendant Alexander McCabe, as

Insurance Commissioner of the State of California, answering the complaint of plaintiff herein, and admits, denies, alleges and avers as follows, to wit:

I.

Answering the allegations contained in paragraphs VI, VII, VIII and IX of said complaint, this defendant alleges that he has no information or belief sufficient to enable him to answer certain of the matters and things therein contained, and basing his denial upon that ground denies that for the purpose and with the object, or for the purpose, or with the object, of obtaining for itself the right to do casualty insurance business, particularly in the State of New York, and in compliance, or in compliance, with the laws of the State of New York, requiring every or any insurance corporation created under the laws of the State, other than the State of New York, to keep on deposit with the Superintendent of Insurance of the State of New York, or with the Auditor, Comptroller, or General Fiscal Officer, securities of the value of \$250,000, or any sum for the benefit of all or any of the policy-holders of such corporation, as a condition precedent to the granting of permission to such corporation to do a casualty insurance business in the State of New York, or elsewhere, or otherwise, or at all, said Pacific Coast Casualty Company at any time prior to the filing of the complaint in the action referred to in the complaint now being answered as the "Original action," or ever, or at all, delivered to the Insurance Commissioner, to be by him deposited with the Treasurer of the State of California, [8] for the security and benefit, or



security, or benefit, of all, or any, of the policy-holders of said company, certain, or any, securities, consisting of bonds of the aggregate value of \$250,000 and upwards, or upwards, or any other sum, or at all, except as herein set out, and in this connection said defendant alleges:

That he is informed and believes, and upon such information and belief alleges that the predecessor, or predecessors, of this defendant in the office of the Insurance Commissioner of the State of California received from said Pacific Coast Casualty Company the securities set out in allegation VIII of said complaint, under the provisions of section 618 of the Pol. C. of the State of California, and not otherwise, on deposit and in trust for the policy-holders of such company, and that he did forthwith make a special deposit of the same in the State Treasury, in packages marked with the name of said company, where the same have since remained as security for policy-holders in said company.

## II.

Answering allegation XI of said complaint, this defendant denies that said Court by reason of the facts set out in said complaint, or otherwise, has acquired and assumed, or acquired, or assumed, jurisdiction of said securities received by the predecessor in office of this defendant, or by him deposited in the State Treasury the jurisdiction to determine and enforce, or determine, or enforce, the rights of policy-holders, creditors and others, or policy-holders or creditors, or others, therein and thereto, or therein, or thereto, or that said plaintiff is entitled

to the possession of said securities and to hold, or to hold, the same subject to such orders and decrees, or orders, or decrees, as to the disposition and application, or disposition, or application, thereof, as the Court [9] may make in said action referred to in said complaint as "original action."

### III.

And further answering said complaint, this defendant alleges that at various times, subsequent to the receipt by the predecessor of this defendant in office as Insurance Commissioner of the State of California, and prior to any demand upon this defendant by said plaintiff, as set out in allegation XII of said complaint, this defendant has received, and has served upon him, as Insurance Commissioner of the State of California, and J. E. Phelps, predecessor of this defendant in the office of Insurance Commissioner of the State of California has received and had served upon him, as such Commissioner, various writs of attachment, writs of execution, notices, demands, and stipulations, according to the following schedules, upon the dates, and by the persons, and in the amount set out in the schedule following:

Date of Service upon Insurance Commissioner.	Name of Claimant.	Amt.	Description of Demand.
November 3, 1916	Henry Weilenman	\$2,936.90	Execution
November 3, 1916	Henry Weilenman	881.60	Execution
November 4, 1916	Sadie Ann Billings et al.	3,373.80	Execution
November 6, 1916	M. J. Mulvihill	2,500.00	Execution
September 26, 1916	Anna McPherson Joseph McPherson	} 307.70	Judgment
June 19, 1916	Clyde C. Struble		
June 23, 1916	Fidelity & Deposit Co. of Maryland	} 14,948.18	Writ of Attech.
November 16, 1916	Theodore Veyhle & Elmo Collins		
November 28, 1916	J. B. Jones	4,600.00	Writ of Attech.
		571.10	Execution

## IV.

That it is necessary and proper to a full and complete determination of the issues of this action that the persons so [10] serving notices, writs and stipulations, upon this defendant, or his predecessor in the office of Insurance Commissioner of the State of California, be brought in as parties to this action, and that the process of this court be served upon them, so that they may appear, and have their respective claims and demands in and to said securities determined in this action; this defendant claiming no interest in, or to, the said securities as Insurance Commissioner, or otherwise, except that the same shall be delivered over to the person, or persons, entitled thereto.

That this defendant is informed and believes and basing his allegation upon that ground alleges that some, or all, of the persons named in the third allegation of this answer were or are policy-holders of the Pacific Coast Casualty Company, and persons for whom the deposit so made as aforesaid are held in trust, and as security for such policy-holders, and that there are other policy-holders of said company likewise interested in said deposit and not parties to said action, and that, therefore, it is not the right or duty of this defendant to release, or consent to the release, of said securities as prayed for in said complaint until the claims and rights of said persons shall have been adjudicated herein.

WHEREFORE, this defendant prays judgment  
1st. That the persons named and referred to in the third allegation of this complaint, and any pol-

icy-holders of said company interested in said deposit, be brought in as parties to this action and required to set up their claims, if any they have, in and to the said deposit, or any part thereof, and that direction be given this defendant as to what action, if any, he shall take with reference to the writs, notices, demands, and stipulations herein and in the complaint in this action set out; and that no judgment be taken against him, and that he be hence dismissed.

And for such other and further relief as shall be just and equitable.

JOHN W. STETSON,

Atty. for Insurance Commissioner. [11]

Service of the within answer admitted by copy this 28th day of June, 1917.

HIRAM W. JOHNSON, Jr., and  
A. A. DE LIGNE,

Attorneys for Plaintiff.

[Endorsed]: Filed June 28, 1917. Walter B. Mal-  
ing, Clerk. [12]

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(Title of Court and Cause.)

**Notice of Motion for Permission to Intervene.**

To the Plaintiff JOHN C. LYNCH, as Receiver of the Pacific Coast Casualty Company, a Corporation, and to Messrs. Hiram W. Johnson, Jr., and A. A. De Ligne, His Attorneys; and to FRIEND WILLIAM RICHARDSON, as Treasurer of the State of California, and to Hon. U. S.



Webb, Attorney General of the State of California, and Hon. John T. Nourse, Deputy Attorney General, His Attorneys; and to ALEXANDER McCABE, as Insurance Commissioner of the State of California, and to John W. Stetson, Esq., His Attorney:

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE THAT Jesse S. Phillips, as Superintendent of Insurance of the State of New York, by Moses James Wright, Special Deputy Superintendent of Insurance, his agent and liquidator of the Casualty Company of America, a corporation, will on Monday, the 15th day of October, A. D. 1917, at the hour of ten o'clock A. M. of said day at the courtroom of the above-entitled court in the United States Postoffice and courthouse building at Seventh and Mission Streets, in the City and County of San Francisco, said Northern District of California, move the said Court for an order permitting him, the said Jesse S. Phillips, as such Superintendent of Insurance of the State of New York, by Moses James Wright, Special Deputy Superintendent of Insurance to file a complaint in intervention herein against the said plaintiff and the said defendants and other parties as more fully appears from a copy of said proposed complaint in intervention hereto annexed and served and filed herewith.

Said motion will be based upon this notice of motion said verified complaint in intervention, and upon all the pleadings, papers, and records on file herein, and will be made upon [13] the ground that the said intervener has an interest in the matter

in litigation herein against both plaintiff and defendants, and asserts and makes demands adversely to both the plaintiff and the defendants, and that a complete determination of the controversy cannot be had without the presence of the intervenor, and the other parties named as defendants in intervention herein.

HARTLEY F. PEART,

Attorney for Jesse S. Phillips, as Superintendent of Insurance of the State of New York, by Moses James Wright, Special Deputy Superintendent of Insurance, His Agent and Liquidator of the Casualty Company of America, a Corporation.  
[14]

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*In the District Court of the United States, in and for the Ninth Judicial Circuit, Northern District of California, Second Division.*

No. 16,079.

JOHN C. LYNCH, as Receiver of the Pacific Coast Casualty Company, a Corporation,  
Plaintiff,

vs.

FRIEND WILLIAM RICHARDSON, as Treasurer of the State of California, and ALEXANDER McCABE, as Insurance Commissioner of the State of California,  
Defendants.

JESSE S. PHILLIPS, as Superintendent of Insurance of the State of New York, by MOSES JAMES WRIGHT, Special Deputy Superintendent of Insurance, His Agent and Liquidator of the Casualty Company of America, a Corporation,

Plaintiff in Intervention,

vs.

JOHN C. LYNCH, as Receiver of the Pacific Casualty Company, a Corporation, FRIEND WILLIAM RICHARDSON, as Treasurer of the State of California, ALEXANDER McCABE, as Insurance Commissioner of the State of California, WILLIAM GOW, M. J. MULVIHILL, EUGENE SCHULER, THEODORE VEYHLE and ELMO COLLINS, Copartners Doing Business Under the Firm Name and Style of VEYHLE & COLLINS, SADIE ANN BILLINGS, CYLDE C. STUBBLE, FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a Corporation, LOS ANGELES ROCK & GRAVEL CO., a Corporation, NATIONAL UNION FIRE INSURANCE CO., a Corporation, HENRY WEILEMAN, ANNA McPHERSON, JOHN DOE, JANE DOE, JAMES BLACK, RICHARD ROE, and GEORGE GREEN,

Defendants in Intervention.

### **Complaint in Intervention.**

Now comes Jesse S. Phillips, as Superintendent of Insurance of the State of New York, of the United



States of America, by Moses James Wright, Special Deputy Superintendent of Insurance, and agent and liquidator of said Superintendent of Insurance of the Casualty Company of America, a corporation, and by leave of this Court first had and obtained, files this his complaint in intervention against the plaintiff John C. Lynch, as receiver of the Pacific Coast Casualty Company, a corporation, and the defendants [15] Friend William Richardson, as Treasurer of the State of California, Alexander McCabe, as Insurance Commissioner of the State of California, William Gow, M. J. Mulvihill, Eugene Schuler, Theodore Veyhle and Elmo Collins, copartners doing business under the firm name and style of Veyhle & Collins, Sadie Ann Billings, Clyde C. Stuble, Fidelity and Deposit Company of Maryland, a corporation, Los Angeles Rock & Gravel Co., a corporation, National Fire Insurance Co., a corporation, Henry Weileman, Anna McPherson, John Doe, Jane Doe, James Black, Richard Roe, and George Green, defendants in intervention, and for cause of action against said defendants in intervention, alleges:

## I.

That this plaintiff in intervention is, and at all the times herein mentioned was, the duly appointed, qualified, and acting Superintendent of Insurance of the State of New York, of the United States of America, and that said Moses James Wright is, and at all times herein mentioned was, the duly appointed, qualified, and acting Special Deputy Superintendent of Insurance of the State of New York, and that said Jesse S. Phillips, as such Superintend-

ent did, on the 4th day of May, 1917, duly appoint said Moses James Wright, as such Special Deputy Superintendent of Insurance, his agent to liquidate the business of the Casualty Company of America, a corporation, as provided by Section 63 of the Insurance Law of the State of New York, and that said Moses James Wright ever since has been and now is, such agent and liquidator of said Casualty Company of America.

## II.

That said Casualty Company of America is and at all the times herein mentioned up to the 4th day of May, 1917, was an insurance corporation organized, created, and existing under and by virtue of the laws of the State of New York, and transacting various kinds of insurance business hereinafter particularly specified in the State of New York and in other States of the [16] United States; and that on the 4th day of May, 1917, upon proceeding duly taken and had by this plaintiff in intervention, the Supreme Court of the State of New York, Part One thereof, at the special term held at the county courthouse in the Borough of Manhattan, city of New York, duly gave, made, and entered its order directing this plaintiff in intervention to take possession of the property and liquidate the business of the said Casualty Company of America, under and pursuant to Section 63 of the Insurance Law of the State of New York, and investing this plaintiff in intervention with title to all the property, contracts, and rights of action of said company, and directing him to deal with the same in his own name as Superin-

tendent of Insurance, and that said order has ever since been, and now is in full force and effect; that this plaintiff in intervention, through his said Special Deputy Superintendent of Insurance and agent as above set forth, did thereupon and on said 4th day of May, 1917, take possession of the property, and proceed to liquidate the business, and is now liquidating the business of the said Casualty Company of America.

### III.

That the defendant in intervention Alexander McCabe is the duly appointed, qualified and acting Insurance Commissioner of the State of California, and that the defendant in intervention Friend William Richardson is the duly elected, qualified, and acting Treasurer of the State of California.

### IV.

That the defendant in intervention John C. Lynch is the duly appointed, qualified, and acting Receiver of the Pacific Coast Casualty Company, a corporation.

### V.

That the defendant in intervention Fidelity and Deposit Company of Maryland is, and at all the times herein mentioned was, [17] a corporation organized, created, and existing under and by virtue of the laws of the State of Maryland; that the defendant in intervention Los Angeles Rock & Gravel Co. is and at all the times herein mentioned was, a corporation organized, created and existing under and by virtue of the laws of the State of California; that the defendant in intervention National Union Fire In-

surance Co. is and at all the times herein mentioned was a corporation created and existing under and by virtue of the laws of one of the states of the United States other than California, the particular state not being known to the plaintiff in intervention, who prays that when this is discovered that this and all other pleadings may be amended accordingly.

## VI.

That the defendants in intervention Theodore Veyhle and Elmo Collins are and at all the times herein mentioned were copartners doing business under the firm name and style of Vehyle & Collins; and that said defendants in intervention are, according to the information and belief of this plaintiff in intervention, and he so alleges, citieznns of the United States and residents of the State of California.

## VII.

That the defendants in intervention M. J. Mulvihill, Eugene Schuler, Sadie Ann Billings, Clyde C. Stuble, Henry Weileman, and Anna McPherson are, according to the information and belief of this plaintiff in intervention, and he so alleges, citizens of the United States and residents of the State of California; that the defendant in intervention William Gow is, according to the information and belief of this plaintiff in intervention, and he so alleges, a citizen of the United States and a resident of the State of New York; that the defendants in intervention John Doe, Jane Doe, James Black, Richard Roe, and George Green are, according to the information and belief of this plaintiff in intervention, and he so al-



leges, citizens of the [18] United States, but this plaintiff in intervention has no information or belief as to where each of said last-named defendants in intervention are resident, and this plaintiff in intervention is ignorant of the true names of said defendants in intervention John Doe, Jane Doe, James Black, Richard Roe, and George Green, and hence brings this action against them under said fictitious names, and prays that when their residences and their true names be discovered that this and all other pleadings may be amended accordingly.

That plaintiff in intervention is informed and believes and according to such information and belief alleges that said defendants in intervention William Gow, M. J. Mulvihill, Eugene Schuler, Theodore Veyhle and Elmo Collins, copartners doing business under the firm name and style of Veyhle & Collins, Sadie Ann Billings, Clyde C. Stuble, Fidelity and Deposit Company of Maryland, a corporation, Los Angeles Rock & Gravel Co., a corporation, National Union Fire Insurance Co., a corporation, Henry Wrieman, Anna McPherson, John Doe, Jane Doe, James Black, Richard Roe, and George Green, have each caused writs of attachment or garnishment to be issued out of the Superior Court of the State of California, and have served and levied the same upon the defendant in intervention Friend William Richardson as Treasurer of the State of California and as against the said securities hereinafter particularly described.

#### VIII.

That on and for a long time prior to the 28th day

of February, 1916, said Pacific Coast Casualty Company, was an insurance company, organized, created, and existing under and by virtue of the laws of the State of California, and holding a permit to do business within the State of California in Surety, Workman's Compensation, Liability, Fidelity, Burglary, and other lines of insurance and elsewhere in the United States of America; [19] that prior to the 28th day of February, 1916, and on or prior to the month of August, 1910, according to the information and belief of this plaintiff in intervention, and he so alleges, said Pacific Coast Casualty Company, for the purpose and object of obtaining a license to do certain lines of insurance business in the State of New York, and pursuant to the Insurance Law of the State of New York, delivered to the Insurance Commissioner of the State of California, to be by him deposited with the Treasurer of the State of California, certain securities of the value of \$250,000 and upwards, hereinafter particularly described, and that said securities, upon receipt thereof by said Insurance Commissioner, were by him specially deposited with the Treasurer of the State of California, in a package or packages, marked with the name of said company, and that said securities, together with the interest coupons thereon, have ever since continued to be, and now are deposited with and held by the Treasurer of the State of California.

That said securities so delivered to the Interstate Commissioner of the State of California, and by him deposited with said Treasurer of the State of California, and now held by said Treasurer according to

the information and belief of your plaintiff, and he so alleges, consist of the following:

Description.	No.	Par Value (Each).
15 City of Los Angeles	Water Works Bonds 30/37, 313/22	\$1000
20 City of Los Angeles	Water Works Bonds 7919, 7922, 7925, 8139/63	1000
10 City of Oakland	Sewer Bonds 951/3, 976/82	1000
10 City of Oakland	Park Bonds 288/97	1000
4 City of Oakland	Mun. Imp. Bonds 1713/16	1000
16 Town of Palo Alto	Mun. Imp. Bonds 25/40	1000
4 Town of Palo Alto	Mun. Imp. Bonds 37/40	875
1 Town of Palo Alto	Water Bonds 37	1000
2 Town of Palo Alto	Sewer Bonds 77, 78	500
2 City of Riverside	St. Imp. Bonds 69, 70	750
45 City & Co. of San Fran- cisco [20]	Fire & Sewer Bonds 2806/30, 4911/12, 3941/53	1000
18 City & Co. of San Fr.	Geary St. Ry. Bonds 1196/1200, 1204/6, 1301/10	1000
10 City of Stockton	Mun. Imp. Bonds 183, 186/8, 191/3, 196/8	1000
20 City of San Diego	Sewer Ext. Bonds 240/5, 253/9, 267/73	500
16 Town of Sebastopol	Mun. Imp. Bonds 70/1, 73/4, 76/7, 79/80	750
6 City of Tulare	Mun. Imp. Bonds 65/70	1000
11 City of Visalia	Mun. Imp. Bonds 104, 160/7, 109/10, 112/3, 115/6, 118/9	1000
25 San Joaquin Highway	Bonds 1799, 1811, 1850/81	1000
10 Nor. Cal. Ry. of Cal.	1st Mtg. Bonds 522/26, 770/74	1000
15 Northern Ry. of Cal.	496/500, 1189/93, 1810, 3120, 3746/7, 4201	1000
7 Pacific Ele. Ry. Co.	Bonds 51, 1714/15, 7992/5	1000
2 Southern Pacific Co.	1st Ref. Bonds M-73049, M-73038	1000

That said securities are the securities mentioned and referred to in paragraph VI of plaintiff's complaint on file herein.



## IX.

That at the city of New York, State of New York, on or about the 25th day of February, 1916, and duly authorized so to do by written consent of more than two-thirds of its stockholders, said Pacific Coast Casualty Company, made and entered into an agreement to and with said Casualty Company of America, in words and figures as follows, to wit:

“THIS REINSURANCE AGREEMENT, Made and entered into by and between the CASUALTY COMPANY OF AMERICA, of New York, New York, (hereinafter referred to as ‘Casualty’) a corporation organized, and existing under and by virtue of the Insurance Laws of the State of New York, and authorized by its charger to transact each and all of the several classes of Insurance business contemplated by this agreement, in the States of New York and California, and elsewhere in the United States, party of the one part, and the Pacific Coast Casualty Company, of California, of San Francisco, California (hereinafter referred to as ‘Pacific’) a corporation organized and existing under the Insurance Laws of the State of California, and authorized by its charger to transact each and all of [21] the several classes of Insurance business contemplated by this agreement, in the State of California, and elsewhere in the United States, party of the other part,

## WITNESSETH:

1. The ‘Pacific’ hereby agrees and binds itself to reinsure with the ‘Casualty’ on and as of the twenty-eighth day of February, 1916, its liability under each

and all of its own unexpired policies of insurance, subject in all respect to the terms, conditions and stipulations hereinafter more fully recited.

2. The 'Casualty' hereby agrees and binds itself to accept and carry for the 'Pacific' the liability so reinsured by it, subject in all respects to the terms, conditions and stipulations hereinafter more fully recited.

3. The business contemplated includes the entire outstanding liability of the 'Pacific' arising after twelve o'clock noon on the twenty-eighth day of February, 1916, under its own policies and renewals, covering risks situated in the State of California and elsewhere in the United States, and embraces the following, so-called, classes of Insurance risks, to wit: Accident and/or Health, Automobile Theft and Automobile Liability or Property Damage or Automobile Collision, Burglary and/or Theft, Fidelity, Employers' and/or Public Liability, Plate Glass, Surety, Workmen's Collective, Workmen's Compensation, and such other classes upon which the 'Pacific' has assumed and is carrying an Insurance liability as the 'Casualty' may and can properly reinsure, but no other.

4. The outstanding liability of the 'Pacific' under all of its said policies and renewals shall be assumed by the 'Casualty' on and as of Twelve o'clock noon of the twenty-eighth day of February, 1916, and the 'Pacific' shall be held harmless and duly protected against any and all claim [22] or loss arising under and by reason of, its policy liabilities; provided the occurrence upon which such claim or loss

is predicated shall have had its inception, and taken place subsequent to twelve o'clock noon of the twenty-eighth day of February, 1916.

5. The 'Pacific' shall furnish, in so far as it is advised, complete data relating to each and every risk to be assumed by the 'Casualty' and shall deliver to the 'Casualty' all applications, reports, inspections, correspondence, agents' contracts and other information of whatever kind or description which it may have acquired with respect to the several risks reinsured. Schedules of the 'Pacific's' policies and renewals in force, and which are subject to the terms and conditions of this agreement, shall be prepared by the 'Pacific' and furnished to the 'Casualty' within thirty days following the date of execution hereof, and these schedules shall be rendered for each class of business separately, and shall be so prepared as to show the essential features of each risk, i. e., Policy number, Renewal number, Date of Commencement, Term, Name of Assured, Beneficiary (if any), Character of risk, Location of risk, Amount of Insurance, Rate, Original Premium, Name and Residence of Agent, Unearned Premium figured from date upon which liability is assumed by the 'Casualty' (i. e., the twenty-eighth day of February, 1916) to the next following date of expiration of the respective policy or renewal, calculated upon the pro rata basis, i. e., such portion of the original premium as the unexpired part of the policy or renewal bears to the full term of such respective policy or renewal.

6. The aggregate amount of the unearned prem-

iums calculated in the manner provided in Paragraph #5 hereof shall, for the purposes of this agreement, be held to be the premium [23] reserved (or so-called reinsurance reserves), and the 'Casualty' shall, within thirty days next following receipt by it of all such schedules, examine and audit the data, and if found to be correct shall confirm same to the 'Pacific,' but if found to be incorrect, shall furnish to the 'Pacific' full account of all such errors, and the correct balance of the premium reserves thus ascertained shall constitute the gross amount (i. e., premiums without reduction by commission or otherwise) of the 'Premium Reserves' hereinafter referred to.

7. In consideration of the assumption by the 'Casualty' of the 'Pacific's' future liability under its outstanding policies and renewals as hereinabove provided, the 'Pacific' shall pay to the 'Casualty' in cash or securities acceptable to the 'Casualty' an amount equal to the 'Premium Reserves' less certain final percentages of such 'Premium Reserves' applying and growing out of the respective classes of business reinsured by the 'Casualty' as follows:

The 'Premium Reserves' covering the business of the several classes of Insurance shall be reduced by the following percentages, to wit:

- (a) Accident and/or Health business . . . . .35%
- (b) Automobile Liability, Automobile  
Theft and/or Property Damage and  
Collision business . . . . .25%
- (c) Burglary and/or Theft business . . . . .35%
- (d) Fidelity business . . . . .30%



- (e) Employers' and 17½ or Public Liability business .....25%
- (f) Plate Glass business .....35%
- (g) Surety business .....30%
- (h) Workmen's Collective business .....17½%
- (i) Workmen's Compensation business....17½%

and if additional classes of business are to be reinsured hereunder, the percentage allowance of reduction of the 'Premium Reserves' applying to the business of such additional classes shall be determined by mutual agreement. The net amount thus found to be due to the 'Casualty' shall be [24] paid by the 'Pacific,' as above stipulated, on receipt of written notice from the 'Casualty' of the amount due.

8. The 'Casualty' shall not be or become liable under any of the 'Pacific's' policies or renewals which have not been included in the schedules of outstanding business hereinbefore provided for.

9. The 'Pacific' shall discontinue and shall not re-engage in the transaction of the direct insurance business, in any of the classes of insurance contemplated hereunder, for a period of five (5) years at any place in the United States.

10. Upon receipt of full and complete information from the 'Pacific' of all unpaid premiums upon any and all policies and renewals reinsured hereunder, the 'Casualty' shall endeavor to collect such unpaid premiums by such processes as it observes in the transaction of its own direct business, and shall render to the 'Pacific' an account of all such premiums so collected monthly, and shall within

fifteen days next following the close of each calendar month hereafter remit to the 'Pacific' the net amount realized during the preceding calendar month, after having deducted agent's commission on the respective items collected, and expense cost incident to and growing out of the 'Casualty's' efforts in this respect.

11. In the event of the parties hereto being unable to agree on any questions which may arise hereunder, such questions shall be settled by arbitration; Edward L. Hearn to represent the 'Casualty' and T. L. Mill or F. B. Lloyd to represent the 'Pacific.' Should the two so selected be unable to agree, they shall select a third, decision shall be final.

12. This agreement in all particulars and in its entirety is subject to the approval and ratification of the Board of [25] Directors or Executive Committees of the respective parties at interest hereto, of which action prompt notice shall be given in writing, accompanied by a certified copy of such respective resolution, by each party to the other. This agreement is also subject to the approval of the State Insurance Department of the State of New York.

THIS AGREEMENT executed in duplicate shall take effect on the 28th day of February, 1916.

Signed in the City of New York, State of New York, this 25th day of February, 1916.

CASUALTY COMPANY OF AMERICA.

(Signed) By EDWARD L. HEARN,  
President.

Attest: JOHN D. JENKINS,  
Secretary.

PACIFIC COAST CASUALTY COM-  
PANY OF CALIFORNIA.

By F. B. LLOYD,  
Attorney in Fact.

Attest: DANIEL COOMBS.

State of New York,  
County of New York,—ss.

On this 25th day of February, 1916, before me personally appeared Edward L. Hearn, President of the Casualty Company of America, to me known and known to me to be the person who executed the foregoing instrument, and who being duly sworn deposes and says, that he knew the seal of said corporation and that the seal affixed is the seal of the Casualty Company of America, and that said seal was attached by resolution of the Board of Directors of said corporation, and that he signed said instrument by like order, and at the same time also personally appeared J. B. Lloyd, attorney in fact of the Pacific Coast Casualty Company, to me known to be the person who executed the foregoing instrument, and who being duly sworn deposes and says that he signed said instrument on behalf of the Pacific Coast Casualty Company by [26] virtue of resolution of the Board of Directors of said Company.

Sworn to before me this 25th day of February, 1916.

(Signed) MARY I. CAMPBELL, (Seal)  
Notary Public Kings County No. 257, Register's No.  
7103. Certificate filed in N. Y. County, No. 295  
Register's No. 7243."



That said agreement was ratified and approved by the Board of Directors of said Pacific Coast Casualty Company and by the Board of Directors of said Casualty Company of America, and by the said Insurance Department of the State of New York. Said agreement will be hereinafter referred to as the "Reinsurance Agreement."

### X.

That at the city of New York, State of New York, and on or about the 25th day of February, 1916, and duly authorized so to do by written consent of more than two-thirds of its stockholders, said Pacific Coast Casualty Company, made and entered into a further agreement to and with said Casualty Company of America, in words and figures as follows, to wit:

"THIS AGREEMENT Made and entered into by and between the Casualty Company of America, of New York, New York (hereinafter referred to as 'Casualty') a corporation organized and existing under and by virtue of the Insurance Laws of the State of New York, and authorized by its charter to transact each and all of the several classes of insurance business contemplated by this agreement, in the States of New York and California, and elsewhere in the United States, party of the one part, and the Pacific Coast Casualty Company, of California, of San Francisco, California, (hereinafter referred to as 'Pacific') a corporation organized and existing under the Insurance Laws of the State of California, and [27] authorized by its charter to transact each and all of the several classes of insur-

ance business contemplated by this agreement, in the State of California, and elsewhere in the United States, party of the other part.

WHEREAS, the 'Pacific' desires to arrange for the further handling, investigation, adjustment, settlement and/or payment of all outstanding claims and losses proceeding from its policies of insurance heretofore issued, and which claims and losses have had their inception in an event occurring prior to 12 o'clock noon, of the twenty-eighth day of February 1916 (the day and hour from which it has reinsured in the 'Casualty' its further outstanding policy liabilities under another engagement running contemporaneously hereto) and to relieve itself of the care and attention incident thereto; and

WHEREAS, the 'Casualty' is prepared to undertake the further handling, investigation, adjustment, settlement and/or payment of such claims and losses subject in all respects to the terms, conditions, and stipulations hereinafter more fully provided.

Now, therefore, this agreement WITNESSETH:

1. The 'Pacific' agrees and binds itself (a) to transfer, assign, and set over to the 'Casualty' in cash or securities acceptable to the 'Casualty,' an amount equal and corresponding to the aggregate amount of the 'Pacific' legal loss reserves of December 31st, 1915, and (b) provided the amount so transferred, as above stipulated, shall ultimately prove to be less than the aggregate amount disbursed by the 'Casualty' in settlement of the losses, liability, costs and expense growing out of such claims and losses, to indemnify the 'Casualty' upon its demand

for any sum so disbursed by it which is in excess of the amount transferred to the 'Casualty' in accordance with this Paragraph #1, and (c) to hold as collateral all of its Capitol and Surplus free of charge [28] without the written consent of Edward L. Hearn, President of the 'Casualty,' subject to the demand of the 'Casualty,' in this respect; provided, however, that if all such outstanding claims and losses have not been adjusted and disposed of by the first of January, 1917, then and in that event each of the parties hereto shall appoint a representative to estimate the reserve necessary to satisfy such of said outstanding claims as may at that time remain unsettled, and the 'Pacific' shall have the right to receive and dispose of, as it may see fit, such part of said loss reserve and Capitol and Surplus as above provided which it has turned over or placed in trust to protect the party of the first part against such outstanding claims as may exceed the estimate of such reserve required to meet such outstanding claims as may be made by said representatives; and in the event said representatives are unable to agree as to the amount of such reserve, they shall appoint a third party whose decision shall be binding.

2. All interest or dividends accruing from the securities transferred to the 'Casualty' by the 'Pacific' on account of the loss reserves, shall be credited to the loss reserves by the 'Casualty' at once on receipt of payment thereof.

3. The 'Casualty' agrees (a) to proceed with the handling, investigation, adjustment, settlement and/or payment of such claims and losses, and to ex-

pedite their final disposition with all possible haste consistent with the best interest of the 'Pacific,' and subject at all times to the supervision of F. B. Lloyd or such other person as the 'Pacific' may designate and (b) provided all such claims and losses are adjusted and finally disposed of at an aggregate amount covering all loss payments, legal expense and court costs incident to and growing out of such claims and losses less than the amount of loss reserves which have been paid over to it under and in accordance [29] with Paragraph #1 and #2 hereof, then and in that event to refund to the 'Pacific' so much of the said loss reserves as may be in excess of the aggregate amount so disbursed by the 'Casualty.'

4. All of the shares of the Capital Stock of the 'Casualty' which may be purchased by the 'Pacific' shall be deposited with the Columbia Trust Company of New York, New York, under a trust agreement to be held by it as collateral to protect the 'Casualty' in the event the amount transferred to the 'Casualty' by the 'Pacific' covering the loss reserves shall prove to be less than the aggregate amount disbursed by the 'Casualty' in payment of losses, costs and expense incident to and growing out of the outstanding claims and losses.

5. In the event of the parties hereto being unable to agree on any questions which may arise hereunder, such questions shall be settled, by arbitration; Edward L. Hearn to represent the 'Casualty' and T. L. Miller or F. B. Lloyd to represent the 'Pacific.' Should the two so selected be unable to



agree, they shall select a third person, whose decision shall be final.

6. This agreement in all particulars and in its entirety is subject to the approval and ratification of the Board of Directors of Executive Committee of the respective parties at interest hereto, of which action prompt notice shall be given in writing, accompanied by a certified copy of such respective resolution, by each party to the other. This agreement is also subject to the approval of State Insurance Department of the State of New York.

This agreement, executed in duplicate, shall take effect on the twenty-eighth day of February, 1916.

Signed, in the City of New York, State of New York, this [30] twenty-fifth day of February, 1916.

CASUALTY COMPANY OF AMERICA.

By EDWARD L. HEARN,  
President.

(Seal) Attest: JOHN S. JENKINS,  
Secretary.

PACIFIC COAST CASUALTY COMPANY OF CALIFORNIA.

By F. B. LLOYD,  
Attorney in Fact.

Attest: DANIEL COMBS.

State of New York,  
County of New York,—ss.

On this 25th day of February, 1916, before me personally appeared Edward L. Hearn, President of the Casualty Company of America, to me known and known to me to be the person who executed the



foregoing instrument, and who being duly sworn deposes and says, that he knew the seal of the said corporation and that the seal affixed is the seal of the Casualty Company of America, and that said seal was attached by resolution of the Board of Directors of said corporation, and that he signed said instrument by like order, and at the same time also personally appeared F. B. Lloyd, attorney in fact of the Pacific Coast Casualty Company to me known to be the person who executed the foregoing instrument, and who being duly sworn, deposes and says that he signed said statement on behalf of the Pacific Coast Casualty Co. by virtue of resolution of the Board of Directors of said company.

Sworn to before me this 25th day of February, 1916.

(Seal)

MARY I. CAMPBELL,

Notary Public, Kings County No. 257, Register's No. 7103. Certificate filed in N. Y. County No. 295 Register's No. 7243." [31]

That said agreement was ratified and approved by the Board of Directors of said Pacific Coast Casualty Company, and by the Board of Directors of said Casualty Company of America, and by the said Insurance Department of the State of New York. Said agreement will be hereinafter referred to as the "Agency Agreement."

## XI.

That on said 28th day of February, 1916, said Pacific Coast Casualty Company had issued and outstanding a great number of policies and renewals thereof of the various lines of insurance described

in paragraph 7 of said "Reinsurance Agreement," and which outstanding liabilities of the Pacific Coast Casualty Company were agreed to be assumed by the Casualty Company of America, pursuant to the terms of said agreement, and that pursuant to the terms of said "Reinsurance agreement" said Pacific Coast Casualty Company became indebted to said Casualty Company of America, on said 28th day of February, 1916, in the sum of \$67,895.83; and that said sum of \$67,895.83 was and is the net amount of unearned premiums or premium reserves audited and confirmed as correct between the two companies, and was the consideration due from the Pacific Coast Casualty Company to the Casualty Company of America for the agreement upon the part of the Casualty Company of America to assume the future liability of the Pacific Coast Casualty Company upon its then outstanding policies and renewals as in said agreement specified; that no part of said sum of \$67,895.83 has ever been paid to the Casualty Company of America or to this plaintiff in intervention by the Pacific Coast Casualty Company, or anyone in its behalf, either in cash or in securities acceptable to the Casualty Company of America, except as hereinafter expressly set forth, and that the whole thereof, to wit: the said sum of \$67,895.83, remains and is now wholly due, owing and unpaid. [32]

## XII.

That pursuant to the terms and provisions of said "Reinsurance Agreement," and upon the policies and renewals thereof, so reinsured by said Casualty

Company of America, the said Casualty Company of America has paid policy and renewal obligations by losses, settlements, and adjustments, each and all of which are valid and existing obligations of the Pacific Coast Casualty Company, so reinsured by it, sums aggregating a sum in excess of \$70,000; that there now exist and are pending many unsettled and unpaid claims and obligations of said Pacific Coast Casualty Company arising out of said policies and renewals so reinsured by said Casualty Company of America, the payment and settlement of which is demanded by the holders thereof from this plaintiff in intervention, and which claims and obligations aggregate sums greatly in excess of said sum of \$70,000; that in the performance of said reinsurance agreement and the terms and conditions thereof upon its part to be performed said Casualty Company of America expended further large sums of money for necessary office space, clerical hire and expert adjusters, physicians and attorneys continuously from and after said 28th day of February, 1916, and up to the said 4th day of May, 1917, in the handling, investigation, adjustment, payment and settlement of claims and obligations so asserted and made against it upon said policies and renewals thereof so reinsured by it.

### XIII.

That subsequent to the 28th day of February, 1916, the Casualty Company of America, endeavored to collect, and prior to December, 1916, did collect, unpaid premiums upon the policies and renewals reinsured under the terms of said "Reinsurance Agreement,"

and duly rendered to the Pacific Coast Casualty Company an account thereof monthly, and collected in all about the sum of \$40,000 and at the direction and upon the authorization of the Pacific Coast Casualty Company, applied said sum [33] of \$40,000, and the whole thereof, to the account of the Pacific Coast Casualty Company, and in settlement of its obligations under the terms of the said "Agency Agreement" as hereinafter particularly set forth.

## XIV.

That the Casualty Company of America, from the time of the execution of the said "Reinsurance Agreement" and up to the said 4th day of May, 1917, duly carried out and performed each and all of the terms and conditions of the said "Reinsurance Agreement" upon its part to be performed.

## XV.

That under and pursuant to the terms of said "Agency Agreement" and subsequent to the 28th day of February, 1916, the Casualty Company of America duly undertook the further handling, investigation, adjustment, settlement, and payment of all said outstanding claims and losses proceeding from the policies of insurance theretofore issued by said Pacific Coast Casualty Co., and which claims and losses had their inception in an event occurring prior to twelve o'clock noon of the 28th day of February, 1916, and that there were on and after said 28th day of February, 1916, a great many outstanding claims and losses requiring proper and skillful handling and investigation, adjustment, and settlement, continuously from and after said 28th day of February,



1917, by and on the part of the said Casualty Company of America, and the expenditure of large sums of money for necessary office space, clerical hire, and the services of expert adjusters, physicians, and attorneys continuously from and after said day and date last mentioned in the handling, investigation, adjustment, payment and settlement of such outstanding claims and losses, and that the said services were thereafter continuously rendered by the said Casualty Company of America to the said Pacific Coast Casualty Company for said purposes up to the said 4th day of May, 1917, [34] and that this plaintiff in intervention still has many unsettled claims, adjustments, and investigations pending in his hands.

That under and pursuant to the terms of said "Agency Agreement" said Pacific Coast Casualty Company agreed to transfer, assign, and set over unto the Casualty Company of America in cash and securities acceptable to the Casualty Company of America an amount equal to the amount of the legal loss reserves of the Pacific Coast Casualty Company as of December 31, 1915; that the amount of the legal loss reserves of said corporation as of said date exceeded the sum of \$250,000; that subsequent to the execution of said "Agency Agreement" said Pacific Coast Casualty Company authorized and directed said Casualty Company of America to apply premiums that might be collected by the said Casualty Company of America under the terms of said "Reinsurance Agreement" and any other premiums



which might be collected by it, to its account under the terms of said "Agency Agreement" and that said Casualty Company of America did, as hereinbefore and hereinafter alleged, so collect and apply premiums in about the sum of \$40,000; that said Pacific Coast Casualty Company did subsequent to the execution of said agreement, and prior to the 30th day of June, 1916, turn over to the said Casualty Company cash and securities in the further sum of \$47,506.90.

## XVI.

That under and pursuant to the terms of said "Agency Agreement," and subsequent to the 28th day of February, 1916, the Casualty Company of America in the said further handling, investigation, adjustment, settlement and payment of said claims and losses, and subject to the supervision and approval of a representative of the Pacific Coast Casualty Company, did expend for and on behalf of the Pacific Coast Casualty Company in payment, adjustment, and settlement of valid claims against said Pacific Coast Casualty Company, the total sum of about \$206,948.25. As hereinabove alleged, the Casualty Company of America received [35] for the account of the Pacific Coast Casualty Company, from collections of premiums under said "Reinsurance Agreement" and other sources the total sum of \$135,805.06, and at the direction of the Pacific Coast Casualty Company, applied said sum of \$135,805.06 to the partial repayment of said sum of \$206,948.25, leaving an agreed balance due to the Casualty Company of America, for expenditures so made on be-

half of said Pacific Coast Casualty Company, under said "Agency Agreement" of \$71,143.19; that no part of said sum of \$71,143.19 has ever been paid to the Casualty Company of America or to this plaintiff in intervention in its behalf by the Pacific Coast Casualty Company, or any one in its behalf, either in cash or in securities acceptable to the Casualty Company of America, except as hereinafter expressly set forth, and the whole balance of said sum, to wit: the sum of \$71,143.19, remains and is now wholly due, owing, and unpaid; that in addition to said sum of \$71,143.19 this plaintiff in intervention still has in his hands a large number of unsettled and pending claims and losses, and that additional sums, the exact amount of which plaintiff in intervention is unable to state, are due to plaintiff in intervention under the terms and conditions of said "Agency Agreement."

#### XVII.

That the Casualty Company of America, from the time of the execution of said "Agency Agreement," and up to said 4th day of May, 1917, duly carried out and performed each and all of the terms and conditions of the said "Agency Agreement" upon its part to be performed.

#### XVIII.

That as hereinabove set forth, there became due and owing to the Casualty Company of America from the Pacific Coast Casualty Company, under the terms of said "Reinsurance Agreement" on said 28th day of February, 1916, said sum of \$67,895.83, being [36] the net amount of unearned premiums or

premium reserves of said insurance so reinsured, and there became due and owing to the Casualty Company of America from the Pacific Coast Casualty Company under the terms of said "Agency Agreement," subsequent to the 28th day of February, 1916, and prior to the 30th day of June, 1916, the sum of at least \$162,000, being the amount equal to the aggregate amount of the legal loss reserves of the Pacific Coast Casualty Company, as of December 31, 1915; less said credits as aforesaid.

That thereupon, and on or about the 30th day of June, 1916, and pursuant to the terms of said "Reinsurance Agreement," and said "Agency Agreement" the Casualty Company of America demanded from the Pacific Coast Casualty Company, the assignment to it in cash or securities acceptable to it, of amounts equal and corresponding to the said unearned premiums or premium reserves, under said "Reinsurance Agreement," and the amount equal to said legal loss reserves due under the terms of said "Agency Agreement," and to protect and indemnify it, the said Casualty Company of America for and from the said disbursements so made by it on behalf of the said Pacific Coast Casualty Company, and to indemnify it for liabilities, disbursements, loss and expenditures then accruing and thereafter to accrue under the terms of each of said agreements; that pursuant to said demand and to the terms of said agreements and each of them, and on the 30th day of June, 1916, at the City of New York, State of New York, said Pacific Coast Casualty Company, duly made, executed, and delivered to the

Casualty Company of America, its written assignment of said securities described in paragraph VI hereof, in words and figures as follows, to wit:

“June 30, 1916.

For and in consideration of One Dollar (\$1.00) and other good and valuable considerations, the receipt whereof is hereby acknowledged and confessed, the Pacific Coast Casualty Company, a foreign corporation organized under the [37] laws of the State of California and having its principal office in the City of San Francisco in said State, hereby sells, assigns, transfers and sets over unto the Casualty Company of America, a domestic corporation organized under the laws of the State of New York, having its principal office in the City and County of New York in said State, all bonds now deposited by, and belonging to the said Pacific Coast Casualty Company, with the Commissioner of Insurance of the State of California, and deposited with the Treasurer of the State of California, as evidenced by the official receipts of the said Commissioner of Insurance therefor, to have and to hold unto the said Casualty Company of America, its successors and assigns forever.

IN WITNESS WHEREOF, the said Pacific Coast Casualty Company has caused these presents to be subscribed by its President, the day and year first above written.

Signed and delivered in the presence of  
PACIFIC COAST CASUALTY COMPANY.

By T. L. MILLER (Signed),  
President.

Witness:

CHARLES S. FORBES (Signed).

State of New York,  
County of New York,—ss.

On this thirtieth day of June, 1916, before me duly came Thomas L. Miller, to me known and known to me to be the President of the Pacific Coast Casualty Company, the corporation described in and who executed the foregoing instrument, by me being duly sworn deposes and says that he is the President of the Pacific Coast Casualty Company, aforesaid, that he executed the foregoing instrument by reason of [38] authority duly conferred upon him by the Directors and by-laws of the said Pacific Coast Casualty Company, and then he was duly authorized to execute the same on behalf of the said Pacific Coast Casualty Company.

MARY I. CAMPBELL,

Notary Public in and for the County of Kings."

That no cash except said sums and said premiums collected under the terms of said "Reinsurance Agreement" and applied as aforesaid under the terms of said "Agency Agreement," hereinabove specified and no securities except those assigned by the foregoing assignment, were ever assigned or set over by the Pacific Coast Casualty Company to the Casualty Company of America, under the terms of either of said agreements.



## XIX.

That by reason of the premises, plaintiff in intervention is entitled to the possession of, and is entitled to and has a prior lien superior to any claim asserted by any defendant in intervention herein, in and to the said securities comprising the said deposit and the whole thereof under and by virtue of the said "Reinsurance Agreement" and said "Agency Agreement" and the said assignment of the securities comprising the said deposit to it for the full amount of said unearned premiums or premium reserve in said sum of \$67,895.83, and for the full amount of said loss reserves of said Pacific Coast Casualty Company as of December 31, 1915, less credits as hereinabove alleged, to wit: a sum in excess of the sum of \$71,143.19.

## XX.

That by reason of the premises plaintiff in intervention is entitled to the possession of and is entitled to and has a prior lien superior to any claim asserted by any defendant in intervention [39] herein, in and to said securities comprising said deposit now in the possession of Friend William Richardson, State Treasurer, to reimburse and indemnify said Casualty Company of America and himself as Superintendent of Insurance and as liquidator thereof, for the full amount of the disbursements already made and the liabilities and obligations accruing and accrued against the said Casualty Company of America and its assets and for disbursements, costs and expenses in sums exceeding the sum of \$70,000 and upwards under the terms of said "Reinsurance

Agreement," and for the full balance of said disbursements, costs, and expenses made by said Casualty Company of America, and plaintiff in intervention under the terms of said "Agency Agreement," aggregating the sum of \$71,143.19 and upwards.

### XXI.

That this plaintiff in intervention is informed and believes and accordingly alleges that on or about the 30th day of June, 1916, said Casualty Company of America duly notified the Insurance Commissioner of the State of California of the said assignment hereinabove in paragraph XVIII hereof set forth and the making thereof by said Pacific Coast Casualty Company to said Casualty Company of America; that thereafter and on or about the 15th day of March, 1917, this plaintiff in intervention duly notified in writing said defendant in intervention John C. Lynch, as receiver of said Pacific Coast Casualty Company, and said defendant in intervention Alexander McCabe, as Insurance Commissioner of the State of California, of the said assignment and the making thereof by said Pacific Coast Casualty Company to said Casualty Company of America.

### XXII.

That prior to filing his petition for leave to intervene herein, plaintiff in intervention made written demand upon the said defendant in intervention, Alexander McCabe, as Insurance Commissioner [40] of the State of California, and upon said defendant in intervention, Friend William Richardson, Treasurer of the State of California, for the delivery to him, the said plaintiff in intervention, of the said

securities and the whole thereof, but that said defendants in intervention, and each of them, refused and neglected, and have ever since refused and neglected to deliver the same or any part thereof, to this plaintiff in intervention.

### XXIII.

That your plaintiff is informed and believes, and therefore alleges, that the defendants in intervention and each of them other than said Insurance Commissioner and Treasurer of the State of California, claim the whole or portions of said securities comprising the deposit held by said Treasurer of the State of California, but that said claims and each of them are without right and are subsequent, subject, and inferior to the claims of plaintiff in intervention; that plaintiff in intervention is informed and believes, and therefore alleges that the defendants in intervention other than Alexander McCabe as Insurance Commissioner of the State of California, Friend William Richardson, as Treasurer of the State of California, and all other policy or bond holders of said Pacific Coast Casualty Company by policies of insurance, instruments of suretyship, or otherwise, did not have or hold accrued claims against said Pacific Coast Casualty Company on the 30th day of June, 1916.

### XXIV.

That thereafter, and on or about the 6th day of December, 1916, said Pacific Coast Casualty Company was adjudged to be insolvent herein, and defendant in intervention, John C. Lynch, was appointed by this Court, the receiver thereof.

XXV.

That by reason of the premises plaintiff in intervention claims the said securities comprising the said deposit and the whole thereof adversely to each and all of the defendants in intervention herein.

[41]

WHEREFORE, plaintiff in intervention prays judgment against the defendants for delivery to him of all the securities mentioned and referred to in this complaint in intervention and for such other and further relief as may be meet and proper in the premises.

HARTLEY F. PEART,  
Attorney for Plaintiff in Intervention.

State of California,  
City and County of San Francisco,—ss.

Hartley F. Peart, being first duly sworn, deposes and says: That he is the attorney for the plaintiff in intervention, Jesse S. Phillips, as Superintendent of Insurance of the State of New York, and Moses James Wright, Special Deputy Superintendent of Insurance, his agent and liquidator of the Casualty Company of America, in the above-entitled action; that affiant has his office in the City and County of San Francisco in said State; that neither the said plaintiff in intervention, nor his said agent and liquidator, said Moses James Wright, is a resident of or is now within the said City and County of San Francisco, the place where affiant has his office, or the State of California; that said Jesse S. Phillips and said Moses James Wright reside and are now in the State of New York; that for said cause, said plaintiff

in intervention is unable to verify this complaint in intervention; that the facts are within the knowledge of affiant; that affiant has read the foregoing complaint in intervention and knows the contents thereof; that the same is true of his own knowledge, except as to those matters that are therein stated on information or belief, and as to those matters, that he believes it to be true.

HARTLEY F. PEART.

Subscribed and sworn to before me this 2d day of October, 1917.

[Seal] J. D. BROWN,  
Notary Public in and for the City and County of San  
Francisco, State of California. [42]

[Endorsed]: Filed Oct. 2, 1917. Walter B. Maling,  
Clerk. [43]

(Title of Court and Cause.)

**Answer of Defendant Friend William Richardson,  
as Treasurer of the State of California.**

Comes now defendant Friend William Richardson, as Treasurer of the State of California, and answering the complaint in the above-entitled action denies and alleges as follows:

1. Said defendant alleges that he has no information or belief upon the subject sufficient to enable him to answer the allegations contained in Paragraph II of the complaint, and therefore and upon that ground denies each and every allegation in said paragraph contained.

2. Upon the same ground said defendant denies



each and every allegation contained in Paragraph III of the complaint.

3. Upon the same ground said defendant denies each and every allegation contained in Paragraph IV of the complaint.

4. Upon the same ground said defendant denies each and every allegation contained in Paragraph V of the complaint.

5. Upon the same ground said defendant denies each and every allegation contained in Paragraph VI of the complaint.

6. Said defendant denies each and every allegation contained in Paragraph VII of the complaint except as hereinafter specifically alleged and set forth.

7. Answering Paragraph VIII of the complaint, said defendant denies each and every allegation in said paragraph contained except as is hereinafter specifically alleged and set forth, and denies that the list of securities in said paragraph is true and correct. Said defendant will furnish a true and correct list at the time of the trial, or at any sooner time upon request.

8. Said defendant alleges that he has no information or belief upon the subject sufficient to enable him to answer the allegations contained in Paragraph IX of the complaint, and therefore and upon that ground denies each and every allegation in said [44] paragraph contained.

9. Upon the same ground said defendant denies each and every allegation contained in Paragraph X of the complaint.

10. Upon the same ground said defendant denies each and every allegation contained in Paragraph XI of the complaint.

11. Further answering said complaint and as a separate defense thereto, said respondent alleges:

That the securities referred to in said complaint were received by said defendant from the Insurance Commissioner of the State of California after deposit thereof had been made with the said Insurance Commissioner by the Pacific Coast Casualty Company; that under the terms of said deposit the securities were to be held for the benefit of the policy-holders of the Pacific Coast Casualty Company. Said defendant is informed and believes and therefore alleges that there are numerous outstanding policy-holders of the Pacific Coast Casualty Company whose claims are unpaid and that the amount of the claims of said policy-holders exceeds the value of said securities and that until said policy-holders are paid pursuant to the terms of said deposit, said respondent holds and claims to hold the said securities for the purpose of the trust created by the aforesaid deposit.

12. Further answering said complaint and as a separate defense thereto said defendant alleges: That provision is and at all times herein mentioned was made in Section 618 of the Political Code of the State of California for a deposit with the Treasurer of the State of California of securities deposited with the Insurance Commissioner by insurance companies pursuant to the terms of said section of the Political Code. That pursuant to said section of

the Political Code the securities referred to in the complaint came into said defendant's possession on deposit as Treasurer of the State of California. That it is provided in Section 618 of the said Political Code of the State of California that such securities [45] shall remain as security for the benefit of policy-holders of the company by whom the deposit was made. Said defendant is informed and believes and therefore alleges that there are numerous outstanding policy-holders of the Pacific Coast Casualty Company whose claims are unpaid and that the amount of the claims of said policy-holders exceeds the value of said securities and that until said policy-holders are paid pursuant to the terms of said deposit, said defendant holds and claims to hold the said securities for the purpose of the trust created by the aforesaid deposit. Defendant alleges upon information and belief that the Pacific Coast Casualty Company is insolvent, and said defendant alleges that the Pacific Coast Casualty Company is insolvent and that said securities are not to be withdrawn but are to be held for administration pursuant to the terms of the Political Code of the State of California and the purposes of trust created at the time of the deposit of said securities.

13. Further answering said complaint and as a separate defense thereto said defendant alleges: That in proceedings pending in the Superior Court of the State of California against the Pacific Coast Casualty Company, numerous garnishments pursuant to writs of attachment were levied upon said de-

defendant as Treasurer of the State of California. That all debts, credits, securities and other personal property belonging to the Pacific Coast Casualty Company and in the possession or control of said defendant were attached. That said garnishments pursuant to said writs of attachment are now in full force and effect and amount in the aggregate to the sum of twenty-six thousand three hundred eighty-six dollars and forty-eight cents (\$26,386.48) besides interest and costs. That said garnishments were issued in the following cases: [46]

Name of Case	Principal Amount Claimed.
M. J. Mulvihill v. Pac. Co. Cas. Co.....	\$ 2,500.00
Eugene Schuler v. Pac. Co. Cas. Co.....	964.50
Theodore Veyhle and Elmo Collins v. Pac. Co. Cas. Co.....	4,600.00
Sadie Ann Billings v. Pac. Co. Cas. Co....	3,373.80
Fidelity & Deposit Co. of Md. v. Pac. Co. Cas. Co.....	14,948.18
Los Angeles Rock & Gravel Co. v. Carroll et al .....	896.89
National Union Fire Ins. Co. v. Pac. Co. Cas. Co.....	1,000.00
Henry Weileman v. Pac. Co. Cas. Co.....	881.60
Weileman et al. vs. Pac. Co. Cas. Co. and Casualty Company of America.....	2,936.90
Anna McPherson et al. v. Hoyst et al.....	307.70

13. Further answering said complaint said defendant alleges that he has been informed that the securities referred to in the complaint were assigned and transferred by the Pacific Coast Casualty Com-

pany prior to the commencement of this action. That said defendant is unable to determine the validity of such assignment or assignments and prays that proper issues be framed in this court for the determination of the question of the validity of said assignments and that said defendant be given full protection in the premises and that this Court make an order directing that all interested and necessary parties be brought before the Court for the determination of said issue.

14. Further answering said complaint and as a separate defense thereto, said defendant alleges: That said defendant holds the securities in the complaint as a trustee and to be delivered by him only to the person or persons legally entitled thereto. That numerous persons have made claims and demands upon said defendant for the whole or a portion of said securities and unless said defendant is protected by a valid order, judgment and decree of this court, said defendant is in jeopardy of contesting conflicting claims and demands in different courts, and unless all of the parties making said claims and demands are brought before this Court, said defendant will not be protected by any order, judgment or decree made herein. That said defendant invokes the [47] aid of this Court to the end that it may bring before it all persons making claims and demands and claiming an interest in said securities or any part thereof, that the claims may be litigated and contested and an order, judgment and decree may be made binding all of the parties making any claim to said securities or any part thereof.



15. That William Gow and Jesse S. Phillips, Superintendent of Insurance of the State of New York, have made claims upon said defendant for the whole or a portion of said securities and defendant invokes the aid of this Court to the end that said persons may be brought before it and their claims litigated and contested and an order, judgment and decree may be made binding all of the parties making any claim to said securities or any part thereof.

U. S. WEBB,

Attorney General.

ALFRED C. SKAIFE,

GUY LEROY STEVICK,

REDMAN & ALEXANDER,

Attorneys for Defendant Friend William Richardson, as Treasurer of the State of California.

United States of America,  
State of California,  
County of Sacramento,—ss.

Friend William Richardson, being first duly sworn, deposes and says: That he is the Treasurer of the State of California and as such is one of the defendants in the above-entitled action. That he has read the foregoing answer to the complaint and knows the contents thereof, and that the same is true of his own knowledge except as to matters therein stated upon information or belief and that as to such matters he believes it to be true.

FRIEND WM. RICHARDSON.

Subscribed and sworn to before me this 21st day of September, 1917.

[Seal] B. GRANT TAYLOR,  
Clerk of the Supreme Court of the State of California.

By Ray C. Waring,  
Deputy. [48]

Service of the within answer admitted this 1st day of Oct. 1917.

HIRAM W. JOHNSON, Jr.,  
Attorney for Plaintiff.

[Endorsed]: Filed Oct. 11, 1917. Walter B. Mal-  
ing, Clerk. [49]

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(Title of Court and Cause.)

**Supplemental Answer of Defendant Alexander Mc-  
Cabe, as Insurance Commissioner of the State of  
California.**

Comes now the defendant Alexander McCabe, the Insurance Commissioner of the State of California, after leave of Court first had and obtained, and files this Supplemental Answer to his Answer on file in said action, and alleges:

That all the allegations in said answer are true, and are hereby made a part hereof, and that in addition to the writs, notices, and demands served upon him, set out in allegation III of said Answer, there was served upon him as such Insurance Commissioner, on the 1st day of October, 1917, by the Sheriff of the City and County of San Francisco a Writ of

Execution, upon a certain Judgment recovered in the Superior Court of the State of California in and for the County of Los Angeles, State of California, by Louise Baldarachi and Frederick Baldarachi vs. The Pacific Coast Casualty Company, a corporation, on the 7th day of May, 1917, for the sum of Two Thousand, Two Hundred and One Dollars and five cents (\$2,201.05), with interest from the 15th day of May, 1916, at the rate of seven per cent (7%) per annum until paid, together with Fourteen Dollars and forty-five cents (\$14.45) costs at the date of judgment, and accruing costs, amounting to the sum of Two Dollars and twenty-five cents (\$2.25).

WHEREFORE, said defendant prays judgment as set out in said answer.

JOHN W. STETSON,

Attorney for Defendant Alexander McCabe, as Insurance Commissioner of the State of California.

[Endorsed]: Filed Oct. 30, 1917. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [50]

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(Title of Court and Cause.)

**Notice of Motion for Judgment.**

To Friend William Richardson, as Treasurer of the State of California, and U. S. Webb, Attorney General, Alfred C. Skaefe, Guy Leroy Stevick and Redmond & Alexander, His Attorneys, and to Alexander McCabe, Insurance Commissioner of the State of California, and John W. Stetson, His Attorney:

PLEASE TAKE NOTICE that the plaintiff will, on Monday, the 19th day of November, 1917, at the United States postoffice and courthouse building, in the city and county of San Francisco, State of California, at the hour of 10:00 o'clock A. M. of said day, or as soon thereafter as counsel can be heard, move the Court for judgment on the pleadings in said action, on the ground that the answers are, and each of the answers filed therein is, frivolous, and that on the allegations and admissions of said answers, taken in connection with the allegations of the complaint in said action, plaintiff is entitled to judgment.

This motion will be based upon the pleadings on file in said action.

Dated November 5th, 1917.

HIRAM W. JOHNSON, Jr., and  
A. A. DE LIGNE,

Attorneys for Plaintiff.

Received a copy of the within Notice of Motion for Judgment, this 6th day of November, 1917.

A. C. SKAIFE,  
REDMAN & ALEXANDER,  
GUY LEROY STEVICK,  
U. S. WEBB,  
JOHN T. NOURSE,

Attys. for Richardson, Treasurer.

[Endorsed]: Filed Nov. 7, 1917. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [51]

(Title of Court and Cause.)

**Admission of Service.**

Due service and receipt of copy of notice of motion of Jesse S. Phillips as Superintendent of Insurance of the State of New York, by Moses James Wright, Special Deputy Superintendent of Insurance, his agent and liquidator of the Casualty Company of America, for permission to intervene herein with his verified complaint in intervention annexed, is hereby admitted this 6th day of October, A. D. 1917.

A. A. DE LIGNE,

HIRAM W. JOHNSON, Jr.,

Attorneys for John C. Lynch, as Receiver of the Pacific Coast Casualty Company, a Corporation, Plaintiff.

JOHN W. STETSON,

(By J. F. McK.),

Attorney for Alexander McCabe, as Insurance Commissioner of the State of California, Defendant.

U. S. WEBB,

JOHN T. NOURSE,

Attorneys for Friend William Richardson, as Treasurer of the State of California, Defendant.

[Endorsed]: Filed Nov. 12, 1917. Walter B. Maling, Clerk. [52]



*In the District Court of the United States, in and  
for the Ninth Judicial Circuit, Northern Dis-  
trict of California, Second Division.*

No. 16,079.

JOHN C. LYNCH, as Receiver of the PACIFIC  
COAST CASUALTY COMPANY, a Cor-  
poration,

Plaintiff,

vs.

FRIEND WILLIAM RICHARDSON, as Treas-  
urer of the State of California, et al.,

Defendants.

**Amended Answer of Defendant Friend William  
Richardson, as Treasurer of the State of Cali-  
fornia.**

Comes now defendant Friend William Richard-  
son, as Treasurer of the State of California, and by  
leave of Court first had and obtained files his  
amended answer, and denies and alleges as follows:

1. Said defendant admits that on or about the  
17th day of November, 1916, Daniel Coombs filed in  
this court an action as in Paragraph II in the com-  
plaint of plaintiff on file herein set forth. But in  
this behalf said defendant avers that this Court was  
without jurisdiction to hear or determine the issues  
in said action, or any thereof, or to grant the relief  
therein prayed for or obtained, or any part thereof,  
save and except to render a money judgment to said  
Daniel Coombs for the amount of his claim; that

Pacific Coast Casualty Company was at all of the times herein mentioned, and now is, a bonding and casualty insurance corporation, organized and existing [53] under and by virtue of the law of the State of California, and deriving all of its powers from the laws of said State; that in the complaint filed in the said action referred to, in Paragraph II of the complaint herein, it was alleged that said Pacific Coast Casualty Company was wholly insolvent and unable to meet its debts and liabilities; that the Insurance Commissioner of the State of California has never certified to the Attorney General of the State of California the fact that said Pacific Coast Casualty Company was or is insolvent; that the Attorney General of the State of California has never commenced an action against said Pacific Coast Casualty Company under the provisions of Chapter 5, Title 10, Part 2, of the Code of Civil Procedure of the State of California. That the action referred to in Paragraph II of the complaint herein was not brought under or in accordance with the provisions of Section 604 of the Political Code of the State of California, or the provisions of the Code of Civil Procedure of the State of California therein referred to; that Section 604 of the Political Code of the State of California, and the sections of the Code of Civil Procedure of the State of California therein referred, provide the sole and exclusive method of liquidating the business and affairs of the Pacific Coast Casualty Company.

2. Defendant denies that thereafter, to wit, on the 6th day of December, 1916, after due proceed-

ings in that behalf had and obtained, or either thereof, in said original or any action, or at any time, this Court duly or at all gave, made and entered, or gave or made or entered, its order and decree, or order or decree, appointing plaintiff receiver of this court of all and singular, or all or singular, the lands, tenements and hereditaments, or either or any thereof, of said Pacific [54] Coast Casualty Company, and of, or of, all personal assets thereof of every kind, or all or any of the personal or any assets thereof of every or any kind, and including, or including, all sum or sums of money due and payable, or due or payable, or to become due and payable or due or payable, to it, and of or of all or any of its office furniture, books of account, or either or any thereof, and other, or other, personal, or any, property, of any or every name, nature and description, or name or nature or description, or of all or any of the stocks, bonds, obligations, choses in action, accounts and rights under contracts, or either or any thereof, now owned and possessed, or now or at all owned or possessed, by said corporation, and together with, or together with, all or any of its corporate rights, franchise, incomes and profits, or either or any thereof, of every or any description in this district or elsewhere, and to have and to hold, or to have or to hold, the same as an officer of and under the orders and directions, or as an officer of, or under the orders, or any orders, or directions, or any direction, of this, or any, court, and that, or that, plaintiff as such receiver, or otherwise, was by said order and decree,

or by said or any order or decree, thereby or at all authorized and directed, or authorized or directed, to take immediate or any possession of all and singular, or all or singular, the property described, or any thereof, or any property; and in that behalf said defendant alleges the true fact to be that the purported order appointing plaintiff receiver, was and is null and void and of no force or effect, and that the above-entitled court was and is without jurisdiction or power to appoint said plaintiff as receiver of said Pacific Coast Casualty Company for the purposes alleged, or for any purpose. [55]

3. Said defendant alleges that he has no information or belief upon the subject sufficient to enable him to answer the allegations contained in Paragraph IV of the complaint, and therefore and upon that ground denies each and every allegation in said paragraph contained.

4. Denies that the plaintiff thereafter, to wit, on the sixth day of November, 1916, or at any time, duly or at all qualified as such Receiver, and denies that ever since said day, or at any time, he has been, and now is, or ever since said or any day, he has been or now is, the duly appointed, and qualified and acting, or the duly or at all appointed or qualified or acting Receiver of this Court in said or any action; and in that behalf said defendant alleges the true fact to be that the purported order appointing plaintiff Receiver, was and is null and void and of no force and effect, and that the above-entitled court was and is without jurisdiction or power to appoint said plaintiff as Receiver of said Pacific Coast Casualty Com-



pany for the purposes alleged, or for any purpose.

5. Said defendant alleges that he has no information or belief upon the subject sufficient to enable him to answer the allegations contained in Paragraph VI of the complaint and therefore and upon that ground denies each and every allegation in said paragraph contained.

6. Denies that the securities referred to in the complaint were delivered to the Insurance Commissioner of the State of California, or deposited with the State Treasurer of the State of California; and in that behalf alleges that the list of securities set forth in the complaint is not true or correct. Defendant further alleges that certain securities were delivered to said Insurance Commissioner and deposited with the State Treasurer, but denies that they were for the purposes, or [56] any purpose, set forth in the complaint.

7. Denies that the securities referred to in Paragraph VIII of the complaint, or any thereof, were delivered to the Insurance Commissioner, or deposited with the Treasurer of the State of California, for the purposes, or any purpose, referred to in the complaint, and denies that the list of securities, as set forth in the complaint, were delivered to said Insurance Commissioner, or deposited with said State Treasurer for any purpose, and alleges that said list is not true or correct.

8. Denies that said, or any, securities should be subject to judgment, orders and decrees, or any thereof, in this action. And in this behalf said defendant avers that this Court was without jurisdic-



tion to hear or determine the issues in the action in which plaintiff herein was appointed Receiver, or any thereof, or to grant the relief therein prayed for or obtained, or any part thereof, save and except to render a money judgment to said Daniel Coombs for the amount of his claim, or to appoint plaintiff Receiver of the Pacific Coast Casualty Company; that the Pacific Coast Casualty Company was at all of the times herein mentioned and now is a bonding and casualty insurance corporation, organized and existing under and by virtue of the law of the State of California and deriving all of its powers from the laws of said State; that in the complaint filed in the action referred to in Paragraph II of the complaint herein, it was alleged that said Pacific Coast Casualty Company was wholly insolvent and unable to meet its debts and liabilities; that the Insurance Commissioner of the State of California has never certified to the Attorney General of the State of California the fact that said Pacific Coast Casualty Company was or is insolvent; that the Attorney General of the State of California has never commenced an action against said Pacific Coast Casualty [57] Company under the provisions of Chapter 5, Title 10, Part 2 of the Code of Civil Procedure of the State of California, That the action referred to in Paragraph II of the complaint herein was not brought under or in accordance with the provisions of Section 604 of the Political Code of the State of California and the provisions of the Code of Civil Procedure of the State of California therein referred to; that Section

604 of the Political Code of the State of California, and the Sections of the Code of Civil Procedure of the State of California, therein referred to, provide the sole and exclusive method of liquidating the business and affairs of the Pacific Coast Casualty Company.

9. Said defendant denies that the alleged securities, or any thereof, so or at all delivered to the Insurance Commissioner of the State of California, and by him, or by him, deposited with the Treasurer of the State of California, were delivered to the Insurance Commissioner and by him, or by him, deposited with said Treasurer, and are, or are, now held by said Treasurer, subject to disposition thereof for the benefit of all or any of the policyholders of said corporation by such or any court as should acquire jurisdiction of the subject-matter thereof, either in the event that said corporation should cease business and become, or should cease business or become, insolvent, and should fail, or should fail, to pay liabilities, or any thereof, which should accrue to the policy-holders, or any policyholder of said corporation, as the same, or any thereof, should fall due; and in that behalf said defendant alleges that if the said securities are to be administered, they must be administered pursuant to Section 604 of the Political Code of the State of California, and the sections of the Code of Civil Procedure therein referred to, and that the administration of said fund and the method therein referred to, is the sole and exclusive [58]. method of liquidating the business and affairs of the Pacific Coast

Casualty Company and of the securities referred to in the complaint, or any thereof.

10. Said defendant alleges that he has no information or belief upon the subject sufficient to enable him to answer the allegations contained in Paragraph X of the complaint and therefore and upon that ground denies each and every allegation in said paragraph contained.

11. Denies that this Court has acquired and assumed, or has acquired or assumed, jurisdiction of said securities deposited with the defendant, as alleged or otherwise, or any security or securities, as well as, or as well as, all or any other property of the Pacific Coast Casualty Company, within this district, and including, or including jurisdiction to determine and enforce, or to determine or enforce, the rights, or any right, of policy-holders, creditors and others, or either or any thereof, therein and thereto, or therein or thereto, and denies that plaintiff as the officer and receiver, or officer or receiver of this court, or otherwise, and by virtue or by virtue of the orders and directions, or orders or any order, or directions or any direction of this Court, as alleged or otherwise, is entitled to the possession of said securities, or any thereof, and to hold, or to hold, the same subject to such orders and decrees, or to such or any order or orders, or decree or decrees, as to the disposition and application thereof, or the disposition or application thereof the Court may hereafter, or at all, make in said original or any action.

12. Further answering said complaint and as a separate defense thereto, said defendant alleges that

it was not the purpose of the action of Daniel Coombs v. Pacific Coast Casualty Company in said complaint referred to, to obtain the appointment [59] of the receiver to acquire possession of the securities in the complaint herein described, or any thereof; that the complaint on file in said action of Daniel Coombs vs. Pacific Coast Casualty Company, alleged that said Pacific Coast Casualty Company had deposited with the Treasurer of the State of California the said securities; that said securities were of the value of Two Hundred and Fifty Thousand Dollars (\$250,000) or thereabouts; that the said securities were held by the Treasurer of the State of California under the direction of the Insurance Commissioner of said State; that the liabilities of the Pacific Coast Casualty Company exceed the sum of Four Hundred Thousand Dollars (\$400,000) or thereabouts; that the assets of said corporation, aside and apart from said securities, did not exceed the sum of Three Hundred Thousand Dollars (\$300,000) or thereabouts, and that the Insurance Commissioner of the State of California would not permit said Pacific Coast Casualty Company to withdraw said securities, or any part thereof.

13. Further answering said complaint and as a separate defense thereto, said defendant alleges that this Court was without jurisdiction to hear or determine the issues in said "Original Action," or any thereof, or to grant the relief therein prayed for or obtained, or any part thereof, save and except to render a personal money judgment in favor of Daniel Coombs for the amount of his claim; that the



Pacific Coast Casualty Company was at all of the times herein mentioned, and now is, a bonding and casualty insurance corporation, organized and existing under and by virtue of the law of the State of California and deriving all of its powers from the laws of said State; that in the complaint filed in the action referred to in Paragraph II of the complaint herein, it was alleged that said Pacific Coast Casualty Company was wholly insolvent and unable to meet its debts and [60] liabilities; that the Insurance Commissioner of the State of California has never certified to the Attorney General of the State of California the fact that said Pacific Coast Casualty Company was or is insolvent; that the Attorney General of the State of California has never commenced an action against said Pacific Coast Casualty Company under the provisions of Chapter 5, Title 10, Part 2 of the Code of Civil Procedure of the State of California. That the action referred to in Paragraph II of the complaint herein was not brought under or in accordance with the provisions of Section 604 of the Political Code of the State of California and the sections of the Code of Civil Procedure of the State of California therein referred to.

14. Further answering said complaint and as a separate defense thereto, said defendant denies that the plaintiff has any right, title or interest in or to the securities referred to in the complaint, or any thereof, and denies that he is entitled to the possession thereof.

15. Further answering said complaint and as a separate defense thereto, said defendant alleges



upon information and belief that the securities referred to in the complaint in the above-entitled action were assigned and transferred to the Casualty Company of America, a corporation created and existing under and by virtue of the laws of the State of New York, and that said assignment was made and executed, on or about the first day of June, 1916, and prior to the commencement of "Original Action" No. 320 in Equity, referred to in the complaint in the above-entitled action.

16. Further answering said complaint and as a separate defense thereto, defendant alleges upon information and belief that prior to the commencement of "Original Action" No. 320 in Equity, referred to in the complaint in the above-entitled [61] action, the Pacific Coast Casualty Company had reinsured all of its unexpired policies and that all of its liabilities under such policies had been assumed by another responsible company, to wit, the Casualty Company of America, and thereupon and prior to the commencement of said "Original Action" all of the securities referred to in the complaint were assigned and transferred to the said Casualty Company of America.

17. Further answering said complaint and as a separate defense thereto, said defendant alleges upon information and belief that prior to the commencement of said "Original Action" referred to in the complaint, the Pacific Coast Casualty Company had ceased to do business in the State of New York, and conclusive evidence was filed that all policies written in said State of New York had expired

or been paid or cancelled or reinsured, and thereafter and prior to the commencement of said "Original Action" said Pacific Coast Casualty Company assigned and transferred the securities referred to in the complaint to the Casualty Company of America.

18. Further answering said complaint and as a separate defense thereto said defendant alleges upon information and belief that prior to the commencement of said "Original Action" No. 320 in Equity, the securities referred to in the complaint in the above-entitled action and all right, title and interest therein, were assigned and transferred to the Casualty Company of America, a corporation.

19. Further answering said complaint and as a separate defense thereto, defendant alleges upon information and belief that at the time of the commencement of said "Original Action" No. 320 in Equity, the Pacific Coast Casualty Company had no right, title or interest in or to any of the securities referred to in the complaint in this action, and had no right [62] to the possession thereof, and the plaintiff above named never acquired any right, title or interest, or right to possession of said securities, or any thereof.

20. And for a further and separate answer to said complaint said defendant avers that the appointment of plaintiff as receiver of Pacific Coast Casualty Company was void and that this Court was without jurisdiction to make such appointment; that on or about the 17th day of November, 1916, Daniel Coombs filed in this court an action against

Pacific Coast Casualty Company, a corporation, for the purpose and with the object of having a receiver of said corporation appointed by this Court, and having all the property and assets of said corporation taken into the possession of this Court, through the receiver thus to be appointed and said property and assets applied to the payment of all the outstanding debts and liabilities of said corporation. That this Court was without jurisdiction to hear or determine the issues in said action, or any thereof, or to grant the relief therein prayed for or obtained, or any part thereof, except to render a personal money judgment in favor of Daniel Coombs for the amount of his claim; that the order purporting to appoint the plaintiff herein receiver, was void and without the jurisdiction of this Court.

21. Further answering said complaint and as a separate defense thereto, said defendant alleges that certain of the securities referred to in the complaint were delivered to the Insurance Commissioner of the State of California and deposited with the State Treasurer of the State of California pursuant to the terms of an express trust and that the securities which were deposited are now held subject to the terms of the aforesaid trust, and the defendants hold and claim to hold the securities so deposited for the purposes of the trust created at the time of the [63] aforesaid deposit. That said securities so deposited are held and defendants claim to hold them for the purposes of administration pursuant to the terms of said trust, and the delivery of said securities, or any of them, to the receiver above

named, would violate the provisions of said trust.

22. Further answering said complaint and as a separate defense thereto said defendant alleges: That in proceedings pending in the Superior Court of the State of California against the Pacific Coast Casualty Company, numerous garnishments pursuant to writs of attachment were levied upon said defendant as Treasurer of the State of California. That all of said levies were made prior to the commencement of said "Original Action" No. 320 in Equity and that all debts, credits, securities and other personal property belonging to the Pacific Coast Casualty Company and in the possession or control of said defendant were attached. That said garnishments pursuant to said writs of attachment are now in full force and effect and amount in the aggregate to the sum of twenty-six thousand three hundred eighty-six dollars and forty-eight cents (\$26,386.48), besides interest and costs. That said garnishments were issued in the following cases:

Name of Case.	Principal Amount Claimed.
M. J. Mulvihill v. Pac. Co. Cas. Co.....	\$2,500.00
Eugene Schuler v. Pac. Co. Cas. Co.....	964.50
Theodore Veyhle and Elmo Collins v. Pac. Co. Cas. Co.....	4,600.00
Sadie Ann Billings v. Pac. Co. Cas. Co.....	3,373.80
Fidelity & Deposit Co. of Ed. v. Pac. Cas. Co. ....	14,948.18
Los Angeles Rock & Gravel Co. v. Carroll et al. ....	896.89



Name of Case.	Principal Amount Claimed.
.....	
National Union Fire Ins. Co. v. Pac. Co. Cas. Co.....	1,000.00
Henry Weileman v. Pac. Co. Cas. Co.....	881.60
Weileman et al. v. Pac. Co. Cas. Co. and Casualty Company of America.....	2,936.90
Anna McPherson, et al. v. Hoyst, et al.....	307.70

23. Further answering said complaint and as a separate defense thereto, said defendant alleges: That said defendant holds the securities referred to in the complaint as [64] a trustee and to be delivered by him only to the person or persons legally entitled thereto. That numerous persons have made claims and demands upon said defendant for the whole or a portion of said securities, and unless said defendant is protected by a valid order, judgment and decree of the court, said defendant is in jeopardy of contesting conflicting claims and demands in different courts, and unless all of the parties making said claims and demands are brought before this Court, said defendant will not be protected by any order, judgment or decree made herein. That said defendant invokes the aid of this Court to the end that it may bring before it all persons making claims and demands and claiming an interest in said securities, or any part thereof, that the claims may be litigated and contested and an order, judgment and decree may be made binding all of the parties making any claim to said securities or any part thereof. That William Gow, Jesse S. Phillips, Superintendent of Insurance of the State of New



York, M. J. Mulvihill, Eugene Schuler, Theodore Veyhle, Sadie Ann Billings, Fidelity & Deposit Company of Maryland, Los Angeles Rock & Gravel Co., National Union Fire Insurance Company, Henry Weileman, Weileman, et al., and Anna McPherson, et al., have made claims upon said defendant for the whole or a portion of the securities, and defendant invokes the aid of this Court to the end that all of said persons may be brought before it and their claims litigated and contested and an order, judgment and decree may be made binding all of the parties making any claim to said securities, or any part thereof.

24. Further answering said complaint and as a separate defense thereto, defendant alleges that the above-entitled Court has no jurisdiction of the subject of the above-entitled action, or of the parties to said action, and in that [65] behalf alleges that all of the parties to the above-entitled action were at the time of the commencement of said action, and ever since have been and now are, residents and citizens of the State of California.

25. Further answering said complaint and as a separate defense thereto said defendant alleges upon information and belief that the securities referred to in the complaint in the above-entitled action were assigned and transferred to the Casualty Company of America, a corporation, on or about the first day of June, 1916, and prior to the commencement of "Original Action" No. 320 in Equity, referred to in the complaint, in the above-entitled action, and that subsequent to said assignment and

in the month of June, 1916, and prior to the commencement of "Original Action" No. 320 in Equity, referred to in the complaint in the above-entitled action, said Casualty Company of America assigned and transferred said securities to William Gow. That by virtue of said assignments William Gow claims said securities and the right to the possession thereof and has instituted an action in the Superior Court of the State of California in and for the City and County of San Francisco against the above-named defendants for the purpose of recovering said securities from said defendants. That said action is now pending in said Superior Court.

WHEREFORE, said defendant prays that plaintiff take nothing by this action; and that William Gow, Jesse S. Phillips, Superintendent of Insurance of the State of California, M. J. Mulvihill, Eugene Schuler, Theodore Veyhle, Sadie Ann Billings, Fidelity & Deposit Company of Maryland, Los Angeles Rock & Gravel Co., National Union Fire Insurance Company, Henry Weileman, et al., and Anna McPherson, et al., may be brought [66] before this Court by appropriate processes to the end that their claims, as well as the plaintiff's, may be litigated and contested and that an order be made bringing said parties before this Court to the end that a judgment and decree may be made binding all of the parties making any claim to said securities, or any part thereof, and protecting the defendants in the above-entitled action from conflicting claims

and demands and preventing a multiplicity of actions and suits.

U. S. WEBB,

Attorney General of the State of California.

ALFRED C. SKAIFE,

GUY LEROY STEVICK,

REDMAN & ALEXANDER,

Attorneys for Defendant Friend William Richardson, as Treasurer of the State of California. [67]

United States of America,

State of California,

City and County of San Francisco,—ss.

Friend William Richardson, being first duly sworn, deposes and says: That he is the Treasurer of the State of California and as such is one of the defendants in the above-entitled action. That he has read the foregoing amended answer to the complaint and knows the contents thereof, and that the same is true of his own knowledge except as to matters therein stated upon information or belief and as to such matters that he believes it to be true.

FRIEND WM. RICHARDSON.

Subscribed and sworn to before me this 6th day of December, 1917.

[Seal]

M. V. COLLINS,

Notary Public in and for the City and County of San Francisco, State of California.

Service of the within answer admitted this 6th day of December, 1917.

HIRAM W. JOHNSON, Jr.,

A. A. DE LIGNE,

Attorneys for Plaintiff.

[Endorsed]: Filed Dec. 6, 1917. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [68]

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*In the District Court of the United States, in and  
for the Ninth Judicial Circuit, Northern Dis-  
trict of California, Second Division.*

No. 16,079.

JOHN C. LYNCH, as Receiver of the PACIFIC  
COAST CASUALTY COMPANY, a Corpo-  
ration,

Plaintiff,

vs.

FRIEND WILLIAM RICHARDSON, as Treas-  
urer of the State of California, and ALEX-  
ANDER McCABE, as Insurance Commis-  
sioner of the State of California,

Defendants.

**Amended Answer.**

Comes now the defendant Alexander McCabe sued herein as Insurance Commissioner of the State of California, and in that capacity after leave of Court first had and obtained files this amended answer to plaintiff's complaint herein, and admits, denies, and alleges as follows, to wit:

I.

Said defendant admits that on or about the 17th day of November, 1916, Daniel Coombs filed in this court an action as in Paragraph II in the complaint of plaintiff on file herein set forth.

And in this behalf said defendant avers that this court was without jurisdiction to hear or determine the issues in said action or any thereof, or to grant the relief therein prayed for or obtained or any part thereof; that Pacific Coast Casualty Company was at all of the times herein mentioned, and now is, a bonding and casualty insurance company, organized and existing under and by virtue of the law of the State of California, and deriving all of its powers from the laws of said State; that in [69] the complaint filed in the said action, in Paragraph II of said complaint referred to, it was alleged that said Pacific Coast Casualty Company was wholly insolvent and unable to meet its debts and liabilities;

That the Insurance Commissioner of the State of California has never certified to the Attorney General of the State of California the fact that said Pacific Coast Casualty Company was or is insolvent; that the Attorney General of the State of California has never commenced an action against said Pacific Coast Casualty Company under the provisions of Chapter 5, Title 10, Part 2, of the Code of Civil Procedure of the State of California, that the action referred to in Paragraph II of the complaint herein was not brought upon or in accordance with the provisions of Section 604 of the Political Code of the State of California; that Section 604 of the Political Code of the State of California, and the sections of the Code of Civil Procedure of the State of California, is the sole and exclusive method of liquidating the business and affairs of the Pacific Coast Casualty Company.



## II.

Defendant denies that thereafter, to wit, on the 6th day of December, 1916, after due proceedings in that behalf had and obtained, or either thereof, in said original or any action, or at any time, this Court duly or at all gave, made and entered, or gave or made or entered, its order and decree, or order or decree, appointing plaintiff receiver of this Court or all and singular, or all or singular, the lands, tenements and hereditaments, or either or any thereof, of said Pacific Coast Casualty Company and of, or of, all personal assets thereof of every kind, or all or any of the personal or any assets thereof of every or any kind, and including, or including, all sum or sums of money due and payable, or due or payable, or to become due and payable or due or payable, [70] to it, and of, or of all or any of the stocks, bonds, obligations, choses in action, accounts and rights under contract, or either or any thereof, now owned and possessed, or now or at all owned or possessed, by said corporation, and together with, or together with all or any of its corporate rights, franchises, incomes and profits, or either or any thereof, of every or any description in this district or elsewhere, and to have and to hold, or to have or to hold, the same as an officer of and under the orders and directions, or as an officer of, or under the orders, or any order, or directions, or any direction, of this, or any, court, and that, or that, plaintiff as such receiver, or otherwise, was by said order and decree, or by any order or decree, thereby or at all authorized and directed, or authorized or directed, to

take immediate or any possession of all and singular, or all or singular, the property described, or any thereof, or any property; and in that behalf said defendant alleges the true fact to be that the purported order appointing plaintiff receiver, was and is null and void, and the above-entitled court was without jurisdiction to appoint said plaintiff as receiver of said Pacific Coast Casualty Company.

### III.

Denies that the plaintiff thereafter, to wit, on the 6th day of November, 1916, or at any time, duly or at all qualified as such receiver, and denies that ever since said day he has been and now is, or ever since said or any day, he has been or now is, the duly appointed, qualified and acting, or the duly or at all appointed or qualified or acting receiver of this court in said action, alleged or otherwise; and in that behalf said defendant alleges the true fact to be that the purported order appointing plaintiff receiver, was and is null and void, and the above-entitled court was without jurisdiction to appoint said plaintiff as receiver of said Pacific Coast Casualty Company. [71]

### IV.

Denies that for the purpose and with the object, or for the purpose or with the object of obtaining for itself the right to do casualty insurance business, particularly in the State of New York, and in compliance, or in compliance, with the laws of the State of New York, requiring every or any insurance corporation created under the laws of the State, other than the State of New York, to keep on de-

posit with the Superintendent of Insurance of the State of New York, or with the Auditor, Comptroller, or General Fiscal Officer, securities of the value of \$250,000, or any sum for the benefit of all or any of the policy-holders of such corporation, as a condition precedent to the granting of permission to such corporation to do a casualty insurance business in the State of New York, or elsewhere, or otherwise, or at all, said Pacific Coast Casualty Company at any time prior to the filing of the complaint in the action referred to in the complaint now being answered as the "original action," or ever, or at all, delivered to the Insurance Commissioner, to be by him deposited with the Treasurer of the State of California, for the security and benefit, or security, or benefit, of all, or any, of the policy-holders of said company, certain, or any, securities, consisting of bonds of the aggregate value of \$250,000 and upwards, or upwards, or any other sum, or at all, except as herein set out, and in this connection said defendant alleges:

That he is informed and believes, and upon such information and belief alleges that the predecessor, or predecessors, of this defendant in the office of the Insurance Commissioner of the State of California received from said Pacific Coast Casualty Company the securities set out in allegation VIII of said complaint, under the provisions of section 618 of the Pol. C. of the State of California, and not otherwise, on deposit and in trust for the [72] policy-holders of such company, and that he did forthwith make a special deposit of the same in the State

Treasury, in packages marked with the name of said company, where the same have since remained as security for policy-holders in said company.

## V.

That the said securities so delivered to this defendant and by him deposited with the State Treasurer were delivered to him and deposited with said Treasurer and are now held by State Treasurer subject to disposition thereof for the benefit of the policy-holders of said corporation in the manner required by law and not otherwise, and that said disposition is not dependent upon the event that said corporation should cease business, or become insolvent, or should fail to pay liabilities which should accrue to policy-holders of said corporation as the same shall fall due, but only upon the order of a court of competent jurisdiction in the manner provided by law regardless of whether said corporation should cease business or should become insolvent.

And in this behalf said defendant avers that this Court was without jurisdiction to hear or determine the issues in the action in which plaintiff herein was appointed receiver, or any thereof, or to grant the relief therein prayed for or obtained, or any part thereof, or to appoint plaintiff receiver of the Pacific Coast Casualty Company; that Pacific Coast Casualty Company was at all of the times herein mentioned and now is a bonding and casualty insurance corporation organized and existing under and by virtue of the law of the State of California and deriving all of its powers from the laws of said



State; that in the complaint filed in the action in Paragraph II of this complaint referred to, it was alleged that said Pacific Coast Casualty Company was wholly insolvent and unable to meet its debts and liabilities; that the Insurance Commissioner of the State of California has never [73] certified to the Attorney General of the State of California the fact that said Pacific Coast Casualty Company was or is insolvent; that the Attorney General of the State of California has never commenced an action against said Pacific Coast Casualty Company under the provisions of Chapter 5, Title 10, Part 2 of the Code of Civil Procedure of the State of California, that the action referred to in Paragraph II of the complaint herein was not brought under or in accordance with the provisions of Section 604 of the Political Code of the State of California; that Section 604 of the Political Code of the State of California, and the sections of the Code of Civil Procedure of the State of California, is the sole and exclusive method of liquidating the business and affairs of the Pacific Coast Casualty Company.

#### VI.

That it is not true that said Pacific Coast Casualty Company is in the process of liquidation because it is true that the said court has no jurisdiction to liquidate the same as hereinbefore set out.

#### VII.

Answering allegation XI of said complaint, this defendant denies that said court by reason of the facts set out in said complaint, or otherwise, has acquired and assumed, or acquired, or assumed, ju-



risdiction of said securities received by the predecessor in office of this defendant, or by him deposited in the State Treasury the jurisdiction to determine and enforce, or determine, or enforce, the rights of policy-holders, creditors, and others, or policy-holders, or creditors, or others, therein and thereto, or therein, or thereto, or that said plaintiff is entitled to the possession of said securities and to hold, or to hold, the same subject to such orders and decrees, or orders, or decrees, as to the disposition and application, or disposition, or application, thereof, as the Court [74] may make in said action referred to in said complaint as "original action."

#### VIII.

And further answering said complaint, this defendant alleges that at various times, subsequent to the receipt by the predecessor of this defendant in office as Insurance Commissioner of the State of California, and prior to any demand upon this defendant by said plaintiff, as set out in allegation XII of said complaint, this defendant has received, and has had served upon him, as Insurance Commissioner of the State of California, and J. E. Phelps, predecessor of this defendant in the office of Insurance Commissioner of the State of California has received and had served upon him, as such Commissioner, various writs of attachment, writs of execution, notices, demands and stipulations, according to the following schedule, upon the dates, and by the persons, and in the amount set out in the schedule following:

Date of Service upon Insurance Commissioner.	Name of Claimant.	Amt.	Description of Demand.
November 3, 1916	Henry Weileman	\$2936.90	Execution
November 3, 1916	Henry Weileman	881.60	Execution
November 4, 1916	Sadie Ann Billings et al.	3373.80	Execution
November 6, 1916	H. J. Mulvihill,	2500.00	Execution
September 26, 1916	Anna McPherson	} 307.70	Judgment
	Joseph McPherson		
June 19, 1917	Clyde C. Struble	6353.84	Writ of Attech.
June 23, 1917	Fidelity & Deposit Co. of Maryland	} 14948.18	Writ of Attech.
	{ Louise Baldarachi & Frederick Baldarachi		
Oct. 1, 1917 [75]	Theodore Veyhle & Elmo Collins	2217.75	Judgment
November 16, 1917	Elmo Collins	} 4600.00	Writ of Attech.
November 28, 1917	J. B. Jones		
		571.10	Execution

## IX.

Further answering said complaint and as a separate defense thereto, said defendant alleges upon information and belief that the securities referred to in the complaint in the above-entitled action were assigned and transferred to the Casualty Company of America, a corporation, created and existing under and by virtue of the laws of the State of New York, and that said assignment was made and executed, on or about the first day of July, 1916, and prior to the commencement of "Original Action," No. 320 in Equity, referred to in the complaint in the above-entitled action.

Further answering said complaint and as a separate defense thereto, defendant alleges upon information and belief that prior to the commencement of "Original Action," No. 320 in Equity, referred to in the complaint in the above-entitled action, the Pacific Coast Casualty Company, had reinsured all of its unexpired policies and all of its liabilities under such policies had been assumed by another responsible company, to wit; the Casualty Company

of America, and thereupon and prior to the commencement of said "Original Action" all of the securities referred to in the complaint were assigned and transferred to the said Casualty Company of America.

Further answering said complaint and as a separate defense thereto, said defendant alleges upon information and belief that prior to the commencement of said original action, referred to in the complaint, the Pacific Coast Casualty Company reinsured all the policies that it had written, and thereafter and prior to the commencement of said "Original Action" said Pacific Coast Casualty [76] Company assigned and transferred the securities referred to in the complaint to the Casualty Company of America.

Further answering said complaint and as a separate defense thereto said defendant alleges upon information and belief that prior to the commencement of said "Original Action" No. 320 in Equity, the securities referred to in the complaint in the above-entitled action and all right, title and interest therein were assigned and transferred to the Casualty Company of America, a corporation.

Further answering said complaint and as a separate defense thereto, defendant alleges upon information and belief that at the time of the commencement of said "Original Action" No. 320 in Equity, the Pacific Coast Casualty Company had no right, title or interest in or to any of the securities referred to in the complaint in this action, and had no right to the possession thereof, and the plaintiff

above named acquired no right, title or interest, or right to possession of said securities, or any thereof.

And for a further and separate answer to said complaint said defendant avers that the appointment of plaintiff as receiver of Pacific Coast Casualty Company was void and that this court was without jurisdiction to make such appointment; that on or about the 17th day of November, 1916, Daniel Coombs filed in this court an action against Pacific Coast Casualty Company, a corporation, for the purpose and with the object of having a receiver of said corporation appointed by this Court, and having all the property and assets of said corporation taken into the possession of this court, through the receiver thus to be appointed and said property and assets applied to the payment of all the outstanding debts and liabilities of said corporation.

That this court was without jurisdiction to hear or determine the issues in said action, or any thereof, or to grant the [77] relief therein prayed for or obtained, or any part thereof; that Pacific Coast Casualty Company was at all of the times herein mentioned and now is a bonding and casualty insurance corporation organized and existing under and by virtue of the law of the State of California, and deriving all of its powers from the laws of said State; that in the complaint filed in said action of Daniel Coombs it was alleged that said Pacific Coast Casualty Company was wholly insolvent and unable to meet its debts and liabilities;

That the Insurance Commissioner of the State of California has never certified to the Attorney Gen-



eral of the State of California the fact that said Pacific Coast Casualty Company was or is insolvent; that the Attorney General of the State of California has never commenced an action against said Pacific Coast Casualty Company under the provisions of Chapter 5, Title 10, Part 2 of the Code of Civil Procedure of the State of California, that the said action of Daniel Coombs was not brought under or in accordance with the provisions of Section 604 of the Political Code of the State of California; that the plaintiff herein was in said action appointed receiver by order of this Court and that said order was void and without the jurisdiction of this Court.

#### X.

Further answering said complaint and as a separate defense thereto, said defendant alleges: That said defendant holds the securities in the complaint as a trustee and to be delivered by him only to the person or persons legally entitled thereto. That numerous persons have made claims and demands upon said defendant for the whole or a portion of said securities and unless said defendant is protected by a valid order, judgment and decree of this Court, said defendant is in jeopardy of contesting conflicting claims and demands in different courts, and unless all of the parties making said claims and demands are brought before this Court, said [78] defendant will not be protected by any order, judgment or decree made herein. That said defendant invokes the aid of this Court to the end that it may bring before it all persons making claims and de-



mands and claiming an interest in said securities or any part thereof, that the claims may be litigated and contested and an order, judgment and decree may be made binding all of the parties making any claim to said securities or any part thereof.

### XI.

That heretofore, to wit, on or about the 18th day of September, 1917, one William Gow commenced an action in the Superior Court of the State of California in and for the city and county of San Francisco, applying for a writ of mandamus directed against this defendant and Friend W. Richardson, Treasurer of the State of California, claiming to be entitled to the position of the securities described in plaintiff's complaint demanding that they be delivered to him, and said action is now pending and indisposed of in said court; that the persons named as claimants, in the eighth allegation of this action claim a right to have the trust herein referred to executed in their behalf in the various amounts set opposite their names in said paragraph and will proceed against this defendant upon his official bond for any losses or damages sustained by them in case he should be required to deliver the said securities as prayed for in plaintiff's complaint herein.

That it is necessary and proper to a full and complete determination of the issues of this action that the said William Gow and the persons so serving notices, writs, and stipulations, upon this defendant, or his predecessor in the office of Insurance Commissioner of the State of California, be brought in as parties to this action, and that the process of this

Court be served upon them, so that they may appear, and have their respective claims and demands in and to said securities determined in this action; this [79] defendant claiming no interest in, or to, the said securities as Insurance Commissioner, or otherwise, except that the same shall be delivered over to the person, or persons, entitled thereto.

That this defendant is informed and believes and basing his allegation upon that ground alleges that some, or all, of the persons named in the eighth allegation of this answer were or are policy-holders of the Pacific Coast Casualty Company, and persons for whom the deposit so made as aforesaid are held in trust, and as security for such policy-holders, and that there are other policy-holders of said company likewise interested in said deposit and not parties to said action, and that, therefore, it is not the right or duty of this defendant to release, or consent to the release, of said securities as prayed for in said complaint until the claims and rights of said persons shall have been adjudicated herein.

## XII.

That the securities referred to in plaintiff's complaint are held in trust for the benefit of the policy-holders of said Pacific Coast Casualty Company and not otherwise; that as this defendant is informed and believes, and, basing his allegations on that ground, alleges that there are various other claimants against the Pacific Coast Casualty Company who are not policy-holders within the meaning of Section 618 of the Pol. C. of California, and who have claims in various large amounts against said com-

pany; that there are no other assets of said company except such as may remain after the performance of the trust for the policy-holders under which the securities herein referred to are held; that if the securities are required to be delivered over to and are delivered over to the said Receiver expenses of administration and of litigation with relation to the said claims other than the claims of policy-holders will be incurred in an amount so great as to defeat the purposes of said trust and to reduce the [80] amount the policy-holders would receive from the proceeds of said securities in the administration of the trust under which the same are held.

### XIII.

Further answering said complaint and as a separate defense thereto, defendant alleges that the above-entitled court has no jurisdiction of the subject of the above-entitled action, or of the parties to said action, and in that behalf alleges that all of the parties to the above-entitled action were at the time of the commencement of said action, and ever since have been and now are, residents and citizens of the State of California.

WHEREFORE, this defendant prays judgment,

1st: that the persons named and referred to in the eighth allegation of this complaint, and any policy-holders of said company interested in said deposit, be brought in as parties to this action and required to set up their claims, if any they have, in and to the said deposit, or any part thereof, and that direction be given this defendant as to what action, if any, he shall take with reference to the writs, no-

tices, demands and stipulations herein and in the complaint in this action set out; and that no judgment be taken against him, and that he be hence dismissed.

And for such other and further relief as shall be just and equitable.

JOHN W. STETSON,

Atty. for Insurance Commissioner.

Service of the within Amended Answer admitted by copy this 6th day of December, 1917.

A. A. DE LIGNE,

HIRAM W. JOHNSON, JR.,

Attorneys for Plaintiff,

REDMAN & ALEXANDER,

Attys. for Defendant Richardson.

[Endorsed]: Filed Dec. 6, 1917. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [81]

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At a stated term, to wit, the November term, A. D. 1917, of the Southern Division of the United States District Court for the Northern District of California, Second Division, held at the courtroom in the city and county of San Francisco, on Saturday, the 15th day of December, in the year of our Lord one thousand nine hundred and seventeen. Present: The Honorable WILLIAM C. VAN FLEET, District Judge.

No. 16,079.

JOHN C. LYNCH, as Receiver, etc.,

vs.

FRIEND WILLIAM RICHARDSON, etc., et al.

**(Order Denying Motion of Phillips to Intervene,  
Etc.)**

The motion of Jesse S. Phillips, Supt. Ins., etc., for leave to intervene, came on for further hearing and after arguments being submitted and fully considered it was ordered that said motion be and the same is hereby denied. The defendant Richardson by his attorney, Mr. Alexander, moved the Court for an order that William Gow, et als., mentioned in defendant's amended answer be made parties to this action, which motion was denied and to which ruling said defendant duly excepted.

Thereupon this cause came on for trial, Hiram W. Johnson, Jr., and A. A. DeLigne, Esqrs., appearing as attorneys for plaintiff and Jewel Alexander, A. C. Skaife, E. B. Power, Deputy Attorney-General, and John W. Stetson, Esqrs., appearing as attorneys for defendants. The defendant Richardson moved for a continuance of the trial and presented and filed the affidavit of Jewel Alexander in support of said motion; after arguments the motion was submitted. [82]

Plaintiff renewed his motion for a judgment as prayed for, on the pleadings as amended and after arguments said motion was continued for further hearing to Dec. 17, 1917. [83]



*In the District Court of the United States, in and for the Ninth Judicial Circuit, Northern District of California, Second Division.*

No. 16,079.

JOHN C. LYNCH, as Receiver of the PACIFIC COAST CASUALTY COMPANY, a Corporation,

Plaintiff,

vs.

FRIEND WILLIAM RICHARDSON, as Treasurer of the State of California, and ALEXANDER McCABE, as Insurance Commissioner of the State of California,

Defendants.

**Bill of Exceptions.**

BE IT REMEMBERED, That the above-entitled action was commenced on the 1st day of June, 1917, by the filing of the complaint herein; that thereafter and on the 28th day of June, 1917, the defendant Alexander McCabe, as Insurance Commissioner of the State of California, filed his answer herein; that thereafter and on the 2d day of October, 1917, Jesse S. Phillips, as Superintendent of Insurance of the State of New York, by Moses James Wright, Special Deputy Superintendent of Insurance, his Agent and Liquidator of the Casualty Company of America, a corporation, filed herein a notice of motion for leave to intervene, together with his proposed complaint in intervention; that thereafter and on the 6th day

of October, 1917, said Jesse S. Phillips, as Superintendent of Insurance of the State of New York, by Moses James Wright, Special Deputy Superintendent of Insurance, his Agent and Liquidator of the Casualty Company of America, a corporation, duly served said notice of motion with copy of said proposed complaint in intervention attached thereto upon the plaintiff and each of the defendants herein; that thereafter and on the 11th day of October, [84] 1917, the defendant Friend William Richardson, as Treasurer of the State of California, filed his answer herein; that thereafter and on the 30th day of October, 1917, the defendant Alexander McCabe, as Insurance Commissioner of the State of California, filed his supplemental answer herein; that thereafter and on the 7th day of November, 1917, plaintiff filed herein his notice of motion for judgment on the pleadings; that thereafter and on the 12th day of November, 1917, said Jesse S. Phillips, as such Superintendent of Insurance of the State of New York, filed herein the admission of service of his motion to intervene and proposed complaint in intervention by plaintiff and defendants herein; that thereafter and on the 3d day of December, 1917, said motion of said Jesse S. Phillips, as Superintendent of Insurance of the State of New York, by Moses James Wright, Special Deputy Superintendent of Insurance, his agent and liquidator of the Casualty Company of America, a corporation, and after continuances duly had and ordered, came on regularly for hearing; said motion was presented to this Court and is based on said notice of motion, said proposed

complaint in intervention duly verified, plaintiff's complaint, the answer and supplemental answer of defendant Alexander McCabe, as such Insurance Commissioner, and the answer of defendant Friend William Richardson, as such Treasurer, by Hartley F. Peart, Esq., attorney for said Jesse S. Phillips, and argument in opposition thereto was made by Hiram W. Johnson, Jr., Esq., and A. A. deLigne, Esq., as attorney for plaintiff, and thereupon said argument was, by order of this Court duly given, made, and entered, continued until the 10th day of December, 1917; that thereafter and on the 6th day of December, 1917, and by leave of the Court first had and obtained the defendant Friend William Richardson, as Treasurer of the State of California, filed herein his amended answer, and on said 6th day of December, 1917, by leave of the Court first had and obtained [85] the defendant Alexander McCabe as Insurance Commissioner of the State of California, filed herein his amended answer; that on said 10th day of December, 1917, said argument in consideration of said motion was by order of this Court duly given, made, and entered, continued until the 15th day of December, 1917, and prior to the trial of said action, when said argument was continued, based upon said pleadings and papers aforesaid, and upon said amended answers of said defendants; that on the 3d day of December, 1917, and at the hearing of the argument on said motion, the defendant Friend William Richardson, as Treasurer of the State of California, stipulated and agreed in open court that the answer of said defendant should

be deemed to admit that the securities referred to in plaintiff's complaint were deposited by the Pacific Coast Casualty Company and were held by said Friend William Richardson as Treasurer of the State of California, under and in accordance with the provisions of Section 618 of the Political Code of the State of California, for the benefit of the policy-holders of said Pacific Coast Casualty Company; that upon said 3d day of December, 1917, said Court granted a motion of said Jesse S. Phillips, as such Superintendent of Insurance, to file a complaint in intervention in the action pending in said court, wherein said John C. Lynch was appointed said Receiver of the said Pacific Coast Casualty Company, and which said lastly-mentioned complaint in intervention is in substance the same as his proposed complaint in intervention herein; that said argument made and based upon said pleadings and papers aforesaid was thereupon concluded upon said 15th day of December, 1917, and taken under consideration by the Court, and the Court thereupon and upon said day and date, gave, made, and entered herein its order denying said motion of said Jesse S. Phillips to file a complaint in intervention herein, which said order is in words and figures as follows, to wit: [86]

“The motion of Jesse S. Phillips, Superintendent of Insurance, etc., for leave to intervene came on for further hearing, and, after arguments being submitted and duly considered, it was ordered that said motion be and the same is hereby denied”;

To the making of which said order and to which



said order said Jesse S. Phillips, as such Superintendent of Insurance, duly excepted.

(Plaintiff in Intervention's Exception No. 1.)

Now, and in furtherance of justice and that right may be done, the said Jesse S. Phillips, as Superintendent of Insurance of the State of New York, by Moses James Wright, Special Deputy Superintendent of Insurance, his agent and liquidator of the Casualty Company of America, a corporation, presents the foregoing, his bill of exceptions in the said cause, and prays that the same may be settled and allowed and filed and certified by the Judge of the said court, as required by law.

Dated: February 20th, 1918.

HARTLEY F. PEART,

Attorney for Jesse S. Phillips, as Superintendent of Insurance of the State of New York, by Moses James Wright, Special Deputy Superintendent of Insurance, His Agent and Liquidator of the Casualty Company of America, a Corporation.

[87]

IT IS HEREBY STIPULATED by the parties hereto that the foregoing bill of exceptions proposed by Jesse S. Phillips, as Superintendent of Insurance of the State of New York, etc., proposed intervenor herein in said cause, has been prepared, certified, and presented within the time allowed by law and the rules and practice and orders of this Court, and may be settled, allowed and certified by the Judge of said court as a correct bill of exceptions in said cause upon writ of error or other proceeding and filed herein.



And it is further stipulated that said bill of exceptions need not contain any of the pleadings or papers therein mentioned and referred to inasmuch as the same will be incorporated by the Clerk in his certified copy of the record.

Dated this 21st day of February, A. D. 1918.

HIRAM W. JOHNSON, Jr., and

A. A. DE LIGNE,

Attorneys for Plaintiff.

JOHN W. STETSON,

Attorney for Defendant Alexander McCabe, as Insurance Commissioner of the State of California.

U. S. WEBB,

Attorney General.

ALFRED C. SKAIFE,

GUY LE ROY STEVICK,

REDMAN & ALEXANDER,

Attorney for Defendant Friend William Richardson, as Treasurer of the State of California.

HARTLEY F. PEART,

Attorney for Plaintiff in Intervention, Jesse S. Phillips, as Superintendent of the State of New York, etc. [88]

**Order Approving, Settling, and Allowing Bill of Exceptions.**

The above and foregoing was duly presented to me, the Judge of the above-entitled court, within the time allowed by law and the rules and practice of this Court, and the same having been examined by counsel for the respective parties and by the Court,

Now, therefore, I, the Judge of the above-entitled court, before whom the above cause was tried, do hereby approve, sign, settle, and certify the same as a full, true, and correct bill of exceptions herein from the order denying the motion of said Jesse S. Phillips, as Superintendent of Insurance of the State of New York, etc., to file his complaint in intervention herein, and do hereby order the same and the whole thereof to be filed as and made a part of the record in this cause.

And I further certify that said bill of exceptions does hereby refer to all papers and exhibits introduced and offered at the hearing of the said motion for leave to intervene on which the same was heard.

Dated: this 26th day of February, A. D. 1918.

WM. C. VAN FLEET,

Judge of the District Court of the United States.

[Endorsed]: Filed Feb. 26, 1918. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [89]

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(Title of Court and Cause.)

**Petition for Writ of Error.**

Jesse S. Phillips, as Superintendent of Insurance of the State of New York by Moses James Wright, Special Deputy Superintendent of Insurance, his Agent and Liquidator of the Casualty Company of America, a corporation, plaintiff in intervention in the above-entitled cause, feeling himself aggrieved by the judgment of the Court entered herein on the 15th day of December, 1917, denying his motion for

leave to intervene herein, comes now by Hartley F. Peart, Esq., his attorney, and files herewith an assignment of errors in said cause and petitions said Court for an order allowing said plaintiff in intervention to procure a writ of error to the Honorable, the United States Circuit Court of Appeals for the Ninth Circuit, under and according to the laws of the United States in that behalf made and provided.

And your petitioner will ever pray.

Dated May 10th, 1918.

HARTLEY F. PEART,

Attorney for Jesse S. Phillips, as Superintendent of Insurance of the State of New York, by Moses James Wright, Special Deputy Superintendent of Insurance, His Agent and Liquidator of the Casualty Company of America, a Corporation, Plaintiff in Intervention.

[Endorsed]: Filed May 10, 1918. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [90]

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(Title of Court and Cause.)

**Assignment of Errors.**

Now comes Jesse S. Phillips, as Superintendent of Insurance of the State of New York, by Moses James Wright, Special Deputy Superintendent of Insurance, his Agent and Liquidator of the Casualty Company of America, a corporation, proposed plaintiff in intervention herein, by his attorney Hartley F. Peart, Esq., and in connection with his

petition for writ of error herein makes the following assignment of errors which he avers were committed by the Court in this cause and in the rendition of the order and judgment herein against said plaintiff in intervention appearing upon the record herein, and upon which he will rely in the prosecution of his said writ of error in the above-entitled cause:

I.

The Court erred in denying the motion of said Jesse S. Phillips, as Superintendent of Insurance of the State of New York, by Moses James Wright, Special Deputy Superintendent of Insurance, his agent and liquidator of the Casualty Company of America, a corporation, for leave to file his proposed complaint in intervention herein.

II.

The Court erred in giving and making its said order and judgment herein denying the motion of Jesse S. Phillips as such Superintendent of Insurance for leave to file his proposed complaint in intervention herein.

III.

Said motion for leave to intervene herein was seasonably made prior to the trial of the said action and said Jesse S. Phillips as such Superintendent of Insurance, was entitled as a matter of right to intervene in said action as shown by the record herein.

[91]

WHEREFORE, said Jesse S. Phillips, as Superintendent of Insurance of the State of New York, by Moses James Wright, Special Deputy Superintendent of Insurance, his agent and liquidator of

the Casualty Company of America, a corporation, plaintiff in error, prays that the said order and judgment of the said District Court may be reversed and that said District Court be directed to grant his said motion allowing him to file his said complaint in intervention against the plaintiff and the defendants and the proposed defendants in intervention, and that he be made a party to said action.

Dated May 10th, 1918.

HARTLEY F. PEART,

Attorney for Jesse S. Phillips, as Superintendent of Insurance, etc., Proposed Plaintiff in Intervention and Plaintiff in Error.

[Endorsed]: Filed May 10, 1918. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [92]

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(Title of Court and Cause.)

**Order Allowing Writ of Error and Fixing Amount of Bond.**

On the 10th day of May, 1918, came Jesse S. Phillips, as Superintendent of Insurance of the State of New York, by Moses James Wright, Special Deputy Superintendent of Insurance, his agent and liquidator of the Casualty Company of America, a corporation, proposed plaintiff in intervention and plaintiff in error, by Hartley F. Peart, Esq., his attorney, and filed herein and presented to this Court, his petition praying for the allowance of a writ of error, and filed and presented therewith his assignment of errors intended to be used by him,



praying also that a transcript of the record, proceedings, and papers, upon which the said order and judgment herein was rendered denying his said motion for leave to intervene herein, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, and that such other and further proceedings may be had as may be proper in the premises.

ON CONSIDERATION WHEREOF, this Court does hereby allow the writ of error and does order that the plaintiff in error shall file with the clerk of this Court a bond with good and sufficient security to the said defendants in error in the sum of Five Hundred (500.00) Dollars to answer all costs if the said plaintiff in error shall fail to sustain his appeal; and it is further ordered that no super-sedeas bond need be filed.

Dated this 10th day of May, 1918.

WM. H. HUNT,  
United States Circuit Judge.

[Endorsed]: Filed May 10, 1918. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [93]

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**(Bond on Writ of Error.)**

KNOW ALL MEN BY THESE PRESENTS, That we, Jesse S. Phillips, as Superintendent of Insurance of the State of New York, by Moses James Wright, Special Deputy Superintendent of Insurance, his agent and liquidator of the Casualty Company of America, a corporation, as principal and National Surety Company, a corporation organized

under the laws of the State of New York, and lawfully transacting business in the Northern District of California, as surety, are held and firmly bound unto John C. Lynch, as Receiver of the Pacific Coast Casualty Company, a corporation, Friend William Richardson, as Treasurer of the State of California, and Alexander McCabe, as Insurance Commissioner of the State of California, in the full and just sum of five hundred and 00/100 (500.00) dollars, to be paid to the said John C. Lynch, as Receiver of the Pacific Coast Casualty Company, a corporation, Friend William Richardson, as Treasurer of the State of California, and Alexander McCabe, as Insurance Commissioner of the State of California, their certain attorneys, executors, administrators or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 10th day of May in the year of our Lord one thousand nine hundred and eighteen.

WHEREAS, lately at a District Court of the United States for the Northern District of California, Second Division, in a suit depending in said court, between said Jesse S. Phillips, as Superintendent of Insurance of the State of New York, by Moses James Wright, Special Deputy Superintendent of Insurance, his agent and liquidation of the Casualty Company of America, a corporation, proposed plaintiff in intervention, plaintiff in error, and John C. Lynch, as Receiver of the Pacific Coast

Casualty Company, a corporation, Friend William Richardson, as Treasurer of the State of California, and Alexander McCabe, as Insurance Commissioner of the State of [94] California, proposed defendants in intervention, defendants in error, a judgment was rendered against the said Jesse S. Phillips, Superintendent of Insurance as aforesaid, and the said Jesse S. Phillips, as Superintendent of Insurance of the State of New York, by Moses James Wright, Special Deputy Superintendent of Insurance, his agent and liquidator of the Casualty Company of America, a corporation, having obtained from said Court a writ of error to reverse the judgment in the aforesaid suit, and a citation directed to the said John C. Lynch, as Receiver of the Pacific Coast Casualty Company, a corporation, Friend William Richardson, as Treasurer of the State of California, and Alexander McCabe, as Insurance Commissioner of the State of California, citing and admonishing them to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, in the State of California within thirty days from the date thereof; to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as aforesaid, should not be corrected, and why speedy justice should not be done.

NOW, THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That if the said Jesse S. Phillips, as Superintendent of Insurance of the State of New York, by Moses James Wright, Special Deputy Superintendent of Insurance, his agent

and liquidator of the Casualty Company of America, a corporation, shall prosecute said writ of error to effect, and answer all costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

JESSE S. PHILLIPS,

As Superintendent of Insurance of the State of New York.

By MOSES JAMES WRIGHT,

Special Deputy Superintendent of Insurance, His Agent and Liquidator of the Casualty Company of America, a Corporation.

By HARTLEY F. PEART, (Seal)

His Attorney.

NATIONAL SURETY CO.

By FRANK L. GILBERT, (Seal)

Its Attorney in Fact.

Acknowledged before me the day and year first above written.

[Seal]

FRANCIS KRULL,

United States Commissioner North'n Dist. of California. [95]

Form of bond and sufficiency of sureties approved.

WM. H. HUNT,

Judge.

[Endorsed]: Filed May 10, 1918. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [96]

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(Title of Court and Cause.)

**Acceptance of Service of Writ of Error.**

The undersigned do hereby each accept on behalf

of the respective parties hereto as hereinbelow stated defendants in error herein, due personal service of the writ of error herein issued on the petition brought therefor by the said Jesse S. Phillips, as Superintendent of Insurance of the State of New York, by Moses James Wright, Special Deputy Superintendent of Insurance, his agent and liquidator of the Casualty Company of America, a corporation, plaintiff in error, this 10th day of May, A. D. 1918.

HIRAM W. JOHNSON, Jr., and  
A. A. DE LIGNE,

Attorneys for John C. Lynch, as Receiver of the Pacific Coast Casualty Company, a Corporation, Plaintiff Herein.

U. S. WEBB,  
(P)

ALFRED C. SKAIFE,  
GUY LE ROY STEVICK,  
REDMAN & ALEXANDER,

Attorneys for Friend William Richardson, as Treasurer of the State of California, Defendant Herein.

JOHN W. STETSON,

Attorney for Alexander McCabe, as Insurance Commissioner of the State of California, Defendant Herein.

[Endorsed]: Filed May 14, 1918. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [97]



(Title of Court and Cause.)

**Acceptance of Service of Citation.**

The undersigned do hereby each accept on behalf of the respective parties hereto as hereinbelow stated, defendants in error herein, due personal service of the citation herein issued on the writ of error brought by the said Jesse S. Phillips, as Superintendent of Insurance of the State of New York, by Moses James Wright, Special Deputy Superintendent of Insurance, his agent and liquidator of the Casualty Company of America, a corporation, plaintiff in error, this 10th day of May, A. D. 1918.

HIRAM W. JOHNSON, Jr., and  
A. A. DE LIGNE,

Attorneys for John C. Lynch, as Receiver of the Pacific Coast Casualty Company, a Corporation, Plaintiff Herein.

U. S. WEBB,  
ALFRED C. SKAIFE,  
GUY LE ROY STEVICK,  
REDMAN & ALEXANDER,

Attorneys for Friend William Richardson, as Treasurer of the State of California, Defendant Herein.

JOHN W. STETSON,  
Attorney for Alexander McCabe, as Insurance Commissioner of the State of California, Defendant Herein.

[Endorsed]: Filed May 14, 1918. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [98]

(Title of Court and Cause.)

**(Praecipe for Record on Writ of Error.)**

To the Clerk of Said Court:

Sir: Please prepare record on writ of error herein to contain the following papers:

The complaint.

Answer of defendant Alexander McCabe, as Insurance Commissioner.

Notice of motion of Jesse S. Phillips, as Supt. of Ins., etc., for leave to intervene, with his proposed complaint in intervention.

Answer of defendant Richardson as Treasurer to complaint.

Supplemental answer of defendant McCabe, as Comm'r.

Plaintiff's notice of motion for judgment on pleadings.

Admission of service on notice of motion to intervene.

Amended answer of defendant Richardson, as Treasurer.

Amended answer of defendant McCabe as Comm'r.

Order denying motion of Phillips as Supt. to intervene.

Bill of exceptions—Stipulation thereto and order allowing and approving and settling same.

Petition of Jesse S. Phillips, as Supt., etc., for writ of error.

Assignment of errors; order allowing writ of error and fixing bond; bond; writ of error; citation

thereon; admission of service of writ of error and of citation.

HARTLEY F. PEART,

Attorney for Jesse S. Phillips, as Superintendent of Insurance, etc. Plaintiff in Intervention, Plaintiff in Error.

[Endorsed]: Filed May 14, 1918. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [99]

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*In the Southern Division of the District Court of the United States in and for the Northern District of California, Second Division.*

No. 16,079.

JOHN C. LYNCH, as Receiver of the PACIFIC COAST CASUALTY COMPANY, a Corporation,

Plaintiff,

vs.

FRIEND WILLIAM RICHARDSON, etc., et al.,  
Defendants.

**Clerk's Certificate to Record on Writ of Error.**

I, Walter B. Mailing, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify the foregoing ninety-nine (99) pages, numbered from 1 to 99, inclusive, to be a full, true and correct copy of the record and proceedings as enumerated in the praecipe for record on writ of error, as the same remains of record and on file in the office of the clerk of said court, and

that the same constitute the return to the annexed writ of error.

I further certify that the cost of the foregoing return to writ of error is \$42.55; that said amount was paid by Hartley F. Peart, Esq., attorney for Jesse S. Phillips, as Superintendent of Insurance, etc., and that the original writ of error and citation issued in said cause are hereto annexed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 6th day of July, A. D. 1918.

[Seal]

WALTER B. MALING,  
Clerk United States District Court.

By J. A. Schaertzer,  
Deputy Clerk. [100]

### **Writ of Error.**

UNITED STATES OF AMERICA,—ss,  
The President of the United States of America, to  
the Honorable, the Judges of the District Court  
of the United States for the Northern District  
of California, Second Division, GREETING:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, or some of you, between Jesse S. Phillips, as Superintendent of Insurance of the State of New York, by Moses James Wright, Special Deputy Superintendent of Insurance, his agent and liquidator of the Casualty Company of America, a corporation, plaintiff in error, and John C. Lynch as Receiver of the Pacific Coast Casualty Company, a corporation, Friend William

Richardson, as Treasurer of the State of California, and Alexander McCabe, as Insurance Commissioner of the State of California, defendants in error, a manifest error hath happened, to the great damage of the said Jesse S. Phillips, as Superintendent of Insurance of the State of New York, by Moses James Wright, Special Deputy Superintendent of Insurance, his agent and liquidator of the Casualty Company of America, a corporation, plaintiff in error, as by his complaint appears:

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the City of San Francisco, in the State of California, within thirty days from the date hereof, in the said Circuit Court of Appeals, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Circuit Court of appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness, the Honorable EDWARD D. WHITE,  
Chief Justice of the United States, the 10th day of



May, in the year of our Lord one thousand nine hundred and eighteen.

[Seal]

WALTER B. MALING,  
Clerk of the United States District Court, Northern  
District of California.

By J. A. Schaertzer,  
Deputy Clerk.

Allowed by

WM. H. HUNT,  
Judge. [101]

**(Return to Writ of Error.)**

The answer of the Judge of the District Court of the United States, in and for the Northern District of California, Second Division.

The record and all proceedings of the plaint whereof mention is within made, with all things touching the same, we certify under the seal of our said Court, to the United States Circuit Court of Appeals for the Ninth Circuit, within mentioned, at the day and place within contained, in a certain schedule to this writ annexed as within we are commanded.

By the Court.

[Seal]

WALTER B. MALING,  
Clerk U. S. District Court.

By J. A. Schaertzer,  
Deputy Clerk U. S. District Court.

[Endorsed]: No. 16,079. United States District Court for the Northern District of California, Second Division. Jesse S. Phillips as Supt., etc., Plaintiff in Error, vs. John C. Lynch as Recr., etc., et al., Defendants in Error. Writ of Error. Filed May

14, 1918. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

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**Citation on Writ of Error.**

UNITED STATES OF AMERICA,—ss.

The President of the United States, to John C. Lynch, as Receiver of the Pacific Coast Casualty Company, a Corporation, Friend William Richardson, as Treasurer of the State of California, and Alexander McCabe, as Insurance Commissioner of the State of California, GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to a writ of error duly issued and now on file in the Clerk's Office of the United States District Court for the Northern District of California, Second Division, wherein Jesse S. Phillips, as Superintendent of Insurance of the State of New York, by Moses James Wright, Special Deputy Superintendent of Insurance, his agent and liquidator of the Casualty Company of America, a corporation, is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable WILLIAM H. HUNT,

United States Circuit Judge for the Ninth Circuit,  
this 10th day of May, A. D. 1918.

WM. H. HUNT,

United States Circuit Judge. [102]

[Endorsed]: No. 16,079. United States District Court for the Northern District of California, Second Division. Jesse S. Phillips, as Supt. of Ins., etc., Plaintiff in Error, vs. John C. Lynch, as Receiver, etc., et al., Defendants in Error. Citation on Writ of Error. Filed May 14, 1918. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

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[Endorsed]: No. 3178. United States Circuit Court of Appeals for the Ninth Circuit. Jesse S. Phillips, as Superintendent of Insurance of the State of New York, by Moses James Wright, Special Deputy Superintendent of Insurance, His Agent and Liquidator of the Casualty Company of America, a Corporation, Plaintiff in Error, vs. John C. Lynch, as Receiver of the Pacific Coast Casualty Company, a Corporation, Friend William Richardson, as Treasurer of the State of California, and Alexander McCabe, as Insurance Commissioner of the State of California, Defendants in Error. Transcript of Record. Upon Writ of Error to the Southern Division of the United States District Court of the Northern District of California, Second Division.

Filed July 6, 1918.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Paul P. O'Brien,  
Deputy Clerk.

*United States Circuit Court of Appeals for the  
Ninth Circuit.*

No. 16,079.

JOHN C. LYNCH, as Receiver of the Pacific Coast  
CASUALTY COMPANY, a Corporation,  
Plaintiff,

vs.

FRIEND WILLIAM RICHARDSON, as Treasurer  
of the State of California, and ALEXANDER  
McCABE, as Insurance Commissioner of the  
State of California,

Defendants.

JESSE S. PHILLIPS, as Superintendent of Insur-  
ance of the State of New York, by MOSES  
JAMES WRIGHT, Special Deputy Superin-  
tendent of Insurance, His Agent and Liqui-  
dator of the CASUALTY COMPANY OF  
AMERICA, a Corporation, Plaintiff in Inter-  
vention,

Plaintiff in Error,

vs.

JOHN C. LYNCH, as Receiver of the PACIFIC  
COAST CASUALTY COMPANY, a Corpora-  
tion, FRIEND WILLIAM RICHARDSON,  
as Treasurer of the State of California, and  
ALEXANDER McCABE, as Insurance Com-  
missioner of the State of California, Defend-  
ants in Intervention,

Defendants in Error.

**Order Extending Time in Which to File Record on  
Writ of Error and Docketing Cause.**

GOOD CAUSE APPEARING THEREFOR, it is hereby ordered that the above plaintiff in error may have and he is hereby given to and including the 9th day of July, A. D. 1918, in which to file his record on writ of error and to docket said cause.

Dated this 4th day of June, A. D. 1918.

WM. H. HUNT,  
Circuit Judge.

[Endorsed]: No. 16,079. United States District Court, Ninth Judicial Circuit, Northern District California, Second Division, John C. Lynch, as Receiver, etc., Plaintiff, vs. Friend William Richardson, as Treasurer, etc., et al., Defendants. Order Extending Time to File Record on Writ of Error and Docketing Cause.

No. 3178. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Rule 16 Enlarging Time to and Including July 9, 1918, to File Record Thereof and to Docket Case. Filed Jun. 4, 1918. F. D. Monckton, Clerk. Refiled Jul. 6, 1918. F. D. Monckton, Clerk.